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1566 IN THE UNITED STATES DISTRICT COURT.
(Caption—59-C-1847)

MOTION FOR WITHDRAWAL OF ANTITRUST FINDINGS AND CONCLUSIONS AND FOR OTHER RELIEF.

Now comes Hazeltine Research, Inc., plaintiff and counterdefendant (hereinafter referred to as "Hazeltine"), by its attorneys, and respectfully moves the Court (a) to withdraw the Findings of Fact and Conclusions of Law with respect to the Antitrust Issues proposed by Zenith Radio Corporation, defendant and counterclaimant (hereinafter referred to as "Zenith"), and entered January 25, 1965, (b) to dismiss the counterclaim as not proven, or (c) in the alternative, to provide for further pleadings, discovery and proof as herein described.

As grounds for its motion, Hazeltine states:

(1) The cause of action which Zenith pleaded in its counterclaim filed May 22, 1963, is entirely different from the cause of action which Zenith attempted to prove and which was embodied in Zenith's findings and conclusions adopted by this Court;

1567 (2) The change in theory of action and of damages was without notice to Hazeltine and resulted in major prejudicial consequences to it;

(3) The general releases given by Zenith in the Zenith-RCA litigation bar all or substantially all of the damages claimed under Zenith's new theory of action;

(4) The Statute of Limitations (15 U. S. C. A. § 15(b)) is (a) a complete bar to recovery under Zenith's new claim, or (b) if not a complete defense, bars substantially all of the damages claimed;

(5) The record entirely fails to show the indispensable "fact of damage," that is, does not show that the "pools" caused Zenith any financial loss;

(6) The evidence as to extent of damage involves so many outright mistakes, false assumptions, incomplete data and unsound accounting procedures as to render it incredible, insufficient, and meaningless as a basis for a finding as to measure of damage;

(7) The face of the record, including Zenith's exhibits, shows that for a number of years, including the period in question, the Australian "pool" has not barred imports into Australia;

(8) Equitable Considerations require a reopening.

These grounds are set forth more fully in the following paragraphs, and a detailed analysis of the facts and applicable law appears in the memorandum filed herewith.

1568 I. The Antitrust Claim Zenith Advanced During Trial and Embodied in Its Proposed Findings and Conclusions, Is Not the Claim which Zenith Pleaded.

The theory of action which Zenith attempted to prove at the trial and is embodied in the findings and conclusions, presents an entirely different lawsuit from the one which was pleaded in the counterclaim.

Counterclaim Pleaded.

(a) Proximate cause of injury. The acts claimed were the "pendency of [the patent infringement] suit," plus the alleged "charges of infringement" in connection with U. S. color patent licensing negotiations, said acts being allegedly done by Hazeltine as a "co-conspirator" in an international conspiracy to restrain importation into foreign countries (Paragraphs 9(C) and 7).

(b) Period of damage. The period for which damage was claimed was from October 18, 1961 to May 22, 1963. As we explain in our memorandum, the beginning date of damage was necessarily October 18, 1961, since that was the earliest date of licensing discussions as to the U. S. color patents referred to in Paragraph 7, and Zenith specifically admitted that the patent infringement suit, by itself, did not cause damage.

(c) Nature and extent of damage. The only damage claimed was that Zenith had "been forced to delay
1569 expansion" of its foreign trade in Canada, England and Australia and other countries as the result of the aforesaid acts (Paragraph 9(C)). In other words, Zenith claimed only such profits as it could have obtained from an increase in its market share after October 18, 1961, and nothing more.

The Cause of Action Zenith Attempted to Prove and Embodied in Its Findings and Conclusions.

The cause of action embodied in the findings and conclusions is not only of vastly greater scope, but entirely different in nature.

(a) Proximate cause of injury. The claimed cause of injury was the alleged restrictive practices of the patent "pools" themselves in England, Canada and Australia, allegedly going back over a period of "many years" (e.g.,

Findings XXI, XXIX, XXXIII). The restrictive practices asserted were the refusal of the pools to license imports, and the threat to sue infringers (e.g., Findings XV, XXV, XXXIII).

(b) Period of damage. Zenith in its new theory of action and in its findings, claimed damages for the four-year period prior to the filing of its counterclaim, i.e., from May 22, 1959 to May 22, 1963 (Finding XXVI).

(c) Nature and extent of damage. Zenith under its new theory of action and in its findings took the position that, but for the restrictive practices of the "pools," 1570 going back over the many years the various pools had been in existence (e.g., Findings XV, XVI, XXI, XXV-XXIX, XXXIII-XXV), it could have in Canada, England and Australia developed a mature market by May 22, 1959, consisting of the same percentage of the market or a stated part of that percentage, which Zenith had built up in the United States where it had been selling radios since about 1923, and television sets since about 1948. It claimed as damage for the full four years (a) those profits in each of the countries, which it asserted it could have realized, if it had been able to develop mature markets, and then profited from them during the four-year-period, together with (b) the profits which it claims it could have gotten from additional growth, during the four-year period, all "but for" the alleged restrictive activities of the pools.

In other words, the lawsuit pleaded and the lawsuit tried were entirely different—as concerns the acts alleged to cause damage—and as concerns the period of alleged damages—and as concerns the nature and extent of the damage which Zenith claimed to have suffered. Further, the new, and unannounced lawsuit called for new defenses, new discovery and an entirely different trial preparation —all of which Hazeltine was deprived of by Zenith's conduct.

1571 II. Zenith's Change in Theory of Action Was Without Notice to Hazeltine and Resulted in Major Prejudicial Consequences to it.

Zenith at no time before or during the trial notified Hazeltine or the Court that it was changing its theory of action. It was not until Zenith produced Exhibit 218, which Hazeltine's counsel had no previous opportunity to analyze, nor had even seen, that there was even an indication that Zenith might be changing its theory of action, but the first time there was in fact an express statement of Zenith's new theory of action was in Zenith's proposed findings and conclusions, almost two months after the trial.

Thus, as Mr. Dodds points out in his affidavit filed herewith, there was (a) no definition of the new issues by a new pleading or otherwise, (b) no opportunity for Hazeltine to plead to the new cause of action and to interpose the affirmative defenses which became applicable, (c) no opportunity to conduct discovery or prepare defenses as to such new theory of recovery, and (d) no fair chance to present a defense thereto at the trial.

The actions of Zenith, which had the effect of misleading Hazeltine's counsel and leaving them surprised and unprepared to deal with or respond to Zenith's new theory and the evidence Zenith asserted, resulted in major and extremely serious consequences to Hazeltine, as hereinafter referred to. The effect of this change of posi-
1572 tion and entrapment was to subject Hazeltine to a potential judgment of over $48,000,000, and to destruction, as herein described.

As we shall show in our brief, exactly the same tactic of claiming one cause of action and trying to prove another was attempted in *Wisconsin Liquor Co.* v. *Park & Tilford Distillers Corp.*, 267 F. 2d 928, 930 (7th Cir. 1959), and both

the District Court and the Seventh Circuit would not permit it, and held the cause of action, as pleaded, not proved.

In this case, the counterclaim as pleaded should be dismissed for failure of proof, but if this is not done, then the case should be reopened as outlined in the subsequent paragraphs to permit the filing of the affirmative defenses and the other steps outlined.

III. The General Releases Given By Zenith in the Zenith-RCA Litigation Bar All, or Substantially All, of the Damages Claimed Under Zenith's New Theory of Action.

By shifting its theory of action, Zenith is trying to recover, for a second time, the alleged damages for which it was allegedly paid $10,000,000 and for which it granted releases in the Zenith-RCA litigation.

All or substantially all of the damages allegedly suffered by Zenith are barred by the general releases which, 1573 Hazeltine alleges on information and belief, were given by Zenith to RCA, General Electric Company and Western Electric Company, or one or more of them, on or about September 27, 1957, as a part of the settlement of the Zenith-RCA litigation. These releases barred not only damages already suffered, but all damages which Zenith "hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents", thusfi covering all loss of profits which Zenith might suffer in the future (including the 1959-1963 period) by reason of the fact that its future share of markets was not as great as it would have been had Zenith been able to develop those markets free of the alleged restrictive effects of the pools.

Zenith has taken the position in this litigation that Hazel-

tine, and its parent, were co-conspirators with RCA, General Electric and Western Electric in the alleged pools and conspiracies. Thus, Zenith's claim against Hazeltine, as an alleged joint tort feasor, is barred by these releases to the same extent as the claims against the parties in the Zenith-RCA litigation.

Zenith's damage claim against Hazeltine for four years profits from fully matured markets, is necessarily based on the alleged effects of the pool activities covered by the 1574 releases. Hazeltine has made herewith, offer to prove said releases.

This Release defense was not applicable and could not have been pleaded to Zenith's original counterclaim, which pleaded only alleged acts occurring after the releases, as alleged causes of damages. It would be highly inequitable to now deprive Hazeltine of the right to interpose the defense.

IV. Statute of Limitations.

Zenith's new claims are subject to the additional affirmative defense which was not applicable, and hence, not pleaded to the counterclaim as pleaded, namely, the bar of the Statute of Limitations. In the counterclaim filed, the alleged "overt acts" causing damage were all within the four-year limitations period. Under Zenith's new theory, this is not the case, and Hazeltine should have the opportunity to plead this defense.

V. The Record Entirely Fails to Show the Indispensable "Fact of Damage" Either Under the Theory Pleaded or the Theory Embodied in the Findings and Conclusions.

The law imposes upon Zenith the burden of proving by clear, concrete and specific evidence that it has, in fact, been injured by some wrongful act of the alleged pool or

pools, but Zenith has been unable to show any specific injury which has resulted to it by reason of any acts

jury which has resulted to it by reason of any acts

1575 of the pool within the complaint period. Indeed, it seeks here to recover over $48,000,000 of treble damages based on mere "guesstimates" of lost market shares.

That such evidence is not sufficient to prove the fact of damage was made clear in the Seventh Circuit's recent decision in *Wisconsin Liquor Co.* v. *Park & Tilford Distillers Corp.* (7th Cir. 1959), 267 F. 2d 928, 932, where a witness testified, without further supporting evidence, that "but for" interference arising from the breach of contract by defendant, plaintiff would have doubled its sales and profits. In holding such an estimate insufficient, the court said:

> "The only other evidence on the question of damages was testimony by one of appellant's officers that during the twelve month period from June 15, 1954 to June 30, 1955 (the first year under the distributorship contract) its books showed gross sales of Park & Tilford products amounting to $347,217.50 with profits (after taxes) of $45,289.25. This witness testified that, *absent interference* arising from the breach of contract, appellant would have doubled such sales and profits. This testimony has no support in the record since there is no competent evidence of loss of customers or sales and could certainly be no basis for the assessment of damages. Loss of profits is a proper measure of damages in Wisconsin, but the evidence must furnish some basis on which profit may be computed with reasonable certainty. [Citing cases.] *Recovery of an alleged loss of profits cannot be had on the basis of pure guesswork and speculative evidence as to the existence and extent of such losses.*" 267 F. 2d at 932 (Emphasis added).

1576 Similarly, Zenith has failed to prove the fact of damage in this case by any specific and concrete evi-

dence, and there is strong reason to believe that it could not do so, as indicated by the following:

A. The alleged loss of radio sales could not have been the result of any activities by the pools, for the record shows that there were no patents which would prevent sales of Zenith's radios.

B. As to television, Zenith did not show that it was prepared or intended to enter into either the Australian or the English markets and ignored or improperly minimized the intervening factors preventing or impeding importation irrespective of any alleged pool restrictions. These included a tariff in Australia which would make the cost of an imported set almost double the price of a locally manufactured set, technical differences in England as to television which would require substantial changes to make a set usable in England, and a substantial price disparity in England which would place Zenith's sets at a price of up to 87% or more higher than locally manufactured sets. Hazeltine has made herewith offer to prove said tariffs and other factors.

C. In Canada, as its own annual statements show, Zenith achieved as large a share of that market as could be expected under the competitive conditions, and Zenith has failed to show that its inability to achieve a larger share of the market was the result of any activity of the pool.

D. Zenith's "estimates" as to the shares it should have had are legally and factually insufficient.

Finally, Zenith's failure to disclose its theory until trial prevented Hazeltine from discovering and offering evidence to show that, in the volumes claimed by Zenith, it 1577 would have been more profitable for Zenith to manufacture in the foreign countries as it was always free to do.

VI. The Evidence as to "Extent of Damage" Involves so Many Outright Mistakes, False Assumptions, Incomplete Data and Unsound Accounting Procedures as to Render it Incredible, Insufficient and Meaningless as a Basis For a Finding as to Measure of Damage.

The defects include the following:

A. Zenith's own Exhibits, upon analysis, suggest that the purported $8,248,296 "profit" which Zenith claims for exports to England, in fact would have been more than an $11,000,000 "loss".

B. About $10,000,000 of the $16,000,000-plus "profits" claimed for the three countries results from the improper exclusions of cost items in the cost compilations for Canada, which were also used for England and Australia.

C. Zenith apparently exaggerated its share of the United States market, which it used as the basis for its market share "estimates" in Canada, England and Australia.

D. In figuring its theoretical sales prices and profit margins, Zenith ignored the effects of tariffs, taxes, transportation and other costs which would have raised prices to noncompetitive levels or entirely destroyed any profit, and which Hazeltine has made offer to prove.

E. Zenith's contention that the problem of adaptation of sets for the English market need not be considered, and that the changes can be made in a distributor's "back room with a screw driver" is so demonstrably absurd and false as to discredit the cost exhibit.

F. Other typical flaws in Exhibit 218 depriving the exhibit of weight include the following:

1578 (1) Failure to consider selling costs.

(2) The assumption that Zenith can ignore competitive prices.

(3) The deliberate selection of figures to inflate "profits."

(4) The careless assumptions as to product mix.

(5) Clerical errors and other evidences of carelessness in the preparation of DX 218.

VII. The Face of the Record, Including Zenith's Exhibits Shows that the Australian Pool Did Not Restrict Imports During the 1959-1963 Period.

Zenith's claim of illegality of the Australian pool is based on the charge that the "standard Pool license" offered to manufacturers "requires the licensee to agree not to export or import or sell or offer for sale in Australia any radio or television receiving apparatus not manufactured in Australia" (Finding XXXIV). The uncontradicted evidence is that since 1951, the "standard Pool license" available to manufacturers has included no restrictions on imports of equipment covered by the patents (license No. 6, DX 193), the restrictions referred to in said finding appearing only in the licenses (DX 194, 195, licenses 6B and 7B) granted to "local assemblers" (R. 1351-1354), which could not affect Zenith.

Further, if the Court feels it necessary, Hazeltine, by separate offer of proof, offers additional evidence
1579 that licenses for imports have been available since 1951, and that such licenses for imports have in fact been granted.

Zenith's contention as to "illegality" of the Australian pool and "restraint" on its imports, is based on license forms and alleged practices which have been inapplicable for over ten years.

VIII. The Equitable Considerations.

The reopening of proof in this case is vital to Hazeltine, and to the ends of justice. It is vital to give Hazeltine a chance to interpose its affirmative defenses, which are of

major importance as a bar to Zenith's claims, and which could not be interposed to the counterclaim as filed. It is vital because otherwise Zenith by its tactic of pleading one lawsuit and trying another will have succeeded in depriving Hazeltine of its rights to make discovery, prepare for, and put in the defenses available to it. It is vital to give Hazeltine a reasonable opportunity to answer on the record the flimsy "proof" of damage offered by Zenith's executives and its Exhibit 218. If Hazeltine does not have this opportunity, it will in substance have been deprived of its day in court.

If judgment is allowed to enter, and if it were asserted against Hazeltine Corporation, the parent, as Zenith now improperly seeks to do, it would destroy both corpo-
1580 rations. As shown by the affidavit of David Westermann filed herewith Hazeltine is a small corporation, whose 1964 profit after taxes was $219,777, and whose net worth is $3,184,419 (and the net income after taxes of Hazeltine Corporation, the parent, which is not a party hereto, is only $1,132,092, and its net worth at the end of 1964, $21,068,763). If this proposed $48,000,000-plus judgment were to be entered, it should in any event be only after Hazeltine has had a fair opportunity to defend itself. It should not occur on the basis of a cause of action which was not pleaded; it should not occur on the basis of the flimsy evidence now in the record.

Hazeltine respectfully states to this Court that while this motion is limited to the matters above alleged, it does not thereby waive its right to raise any other matters in any subsequent proceedings.

Wherefore, Hazeltine Research, Inc. respectfully prays the Court that the following relief be granted:

(A) That the findings and conclusions herein as to the antitrust counterclaim be withdrawn, and that the counterclaim as pleaded be dismissed for lack of proof, or if not,

that the further steps and actions hereinafter prayed be ordered.

(B) That Zenith be required to amend its counterclaim so that its pleadings shall comply with the theory of action embodied in its proposed findings and conclusions.

1581 (C) That Hazeltine be permitted to answer to such amended pleading, and to file its affirmative defenses thereto.

(D) That Hazeltine be permitted reasonable opportunity to engage in further discovery on the matters set forth in this motion, including discovery of the records and personnel of Zenith.

(E) That the Court hold further hearings on the matters set forth in the foregoing motion to permit the introduction of further evidence by Hazeltine, including evidence as to the matters stated in its offers of proof.

(F) That Hazeltine be granted such other and further relief as is proper under the circumstances.

Oral argument is requested.

Respectfully submitted,

Hazeltine Research, Inc.,
By: John T. Chadwell,
Victor P. Kayser,
M. Hudson Rathburn,
Attorneys for Plaintiff-Counterdefendant.

Of Counsel:

Laurence B. Dodds,
59-25 Little Neck Parkway,
Little Neck, New York,

Chadwell, Keck, Kayser,
Ruggles & McLaren,
135 South LaSalle Street,
Chicago, Illinois 60603,

Mason, Kolehmainen, Rathburn & Wyss,
20 North Wacker Drive,
Chicago, Illinois 60606.

1795 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

PLAINTIFF'S MOTION FOR WITHDRAWAL OF FINDINGS AND CONCLUSIONS AS TO MISUSE OF PATENTS.

Now comes Hazeltine Research, Inc., plaintiff and counter-defendant (hereinafter referred to as "Hazeltine"), by its attorneys, and respectfully moves the Court to withdraw the findings of fact and conclusions of law entered January 25, 1963, as they pertain to the defense of misuse, to permit the introduction of certain evidence on said points, and re-argument, as hereinafter described.

As grounds for this motion, Hazeltine states:

(1) Hazeltine recognizes that in the case of the misuse defenses, there is no problem of change of theory of recovery, nor of surprise and accompanying prejudice, but respectfully states to the Court its brief that the
1796 findings and conclusions on misuse are erroneous and that the enlargement of the evidence and further consideration of additional law can be expected to cause the Court to come to a different conclusion. Accordingly, Hazeltine respectfully requests the Court to exercise its discretion to consider the admission of further evidence and reargument as herein described.

(2) One ground for the Court's conclusion of misuse of patents was Zenith's contention that the formula of 50% maximum royalty for one patent, 80% royalty for two patents and 100% of the royalty for three patents was inherently coercive (Finding XI). Hazeltine desires to supplement the proof in the record, by the offer of the license agreements themselves, to show that 9 out of the 14 active licenses at the time of the filing of the counterclaim

were for less than all of the patents and the royalties were on the basis of the 50-80-100% formula; and that, in fact, the patent in suit was the one most commonly licensed at a royalty of 50% of the stated package rate. In other words, the 50-80-100% formula did not have the effect of economic coercion to force acceptance of the package.

(3) Another alleged ground of misuse involved Hazeltine's offer of a color license to Zenith and is based
1797 upon the charge that the benefit of a $200,000 maximum provision was available only if Zenith accepted a full package license for both black and white and color television use. Hazeltine desires to offer evidence of actual licenses in which the $200,000 maximum was afforded even though the entire package license for both uses was not taken by the licensor. Further, Hazeltine respectfully suggests that an analysis of the present record will show that there is no basis for Zenith's charge that the $200,000 maximum was applicable only to the full package license for both uses.

(4) The final ground for the alleged misuse was the conclusion that it is unlawful per se for a licensor to charge a royalty based upon the number of units manufactured by the licensee, whether or not such manufacturer embodies the claims of the licensed patents. We respectfully suggest that there are a number of cases, including cases decided by the Seventh Circuit after *Automatic Radio* v. *Hazeltine*, which approve licenses which require such a royalty base and the offer of such licenses to prospective licensees. These cases were not previously called to the Court's attention on this particular point.

1798 (5) We believe that if the foregoing requests are granted, the reopening of proof would not require a substantial amount of time and would no doubt be limited to the introduction into evidence of the actual license

agreements, which Zenith may well be willing to stipulate to.

Wherefore, Hazeltine respectfully prays that the relief set forth above be granted.

Respectfully submitted,

Hazeltine Research, Inc.,
By John T. Chadwell,
Victor P. Kayser,
M. Hudson Rathburn,
Attorneys for Plaintiff-Counterdefendant.

Of Counsel:

Laurence B. Dodds,
59-25 Little Neck Parkway,
Little Neck, New York.

Chadwell, Keck, Kayser, Ruggles & McLaren,
135 South LaSalle Street,
Chicago, Illinois 60603.

Mason, Kolehmainen, Rathburn & Wyss,
20 North Wacker Drive,
Chicago, Illinois 60606.

1742 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

OFFERS OF PROOF BY HAZELTINE RESEARCH, INC. IN SUPPORT OF MOTION FOR WITHDRAWAL OF FINDINGS AND CONCLUSIONS, ETC.

John T. Chadwell,
Victor P. Kayser,
M. Hudson Rathburn,
Attorneys for Hazeltine Research, Inc., Plaintiff-Counterdefendant.

Of Counsel:
Laurence B. Dodds,
59-25 Little Neck Parkway,
Little Neck, New York,

Chadwell, Keck, Kayser,
Ruggles & McLaren,
135 South LaSalle Street,
Chicago, Illinois 60603,

Mason, Kolehmainen, Rathburn & Wyss,
20 North Wacker Drive,
Chicago, Illinois 60606.

1743 IN THE UNITED STATES DISTRICT COURT.
(Caption—59-C-1847)

Offers of Proof by Hazeltine Research, Inc. in Support of Motion for Withdrawal of Findings and Conclusions, Etc.

Plaintiff and counter-defendant, Hazeltine Research, Inc. ("Hazeltine"), by its attorneys, hereby makes the offers of proof as set forth on the attached offers, for the purposes and on the grounds therein stated.

Said offers consist of the following:

1. Proof of the releases given by Zenith to RCA, General Electric Company and Western Electric Company, or one or more of them in the Zenith-RCA litigation.
2. Proof of report of Ernst & Ernst concerning Zenith's Exhibit 218.
3. Proof of Zenith's annual reports for the period 1947 to 1963, and proof of Zenith sales and net income for 1964.
4. Proof of tariffs, taxes and other matters affecting import of television and radio sets into Australia, Canada and England.

1744 5. Proof as to changes necessary to adapt American television sets for the English market.

6. Proof as to licenses and licensing practices of Australian "pool".

Respectfully submitted,

Chadwell, Keck, Kayser, Ruggles & McLaren,

By: Victor P. Kayser,

Attorneys for Hazeltine Research, Inc.

1745 **Offer of Proof of Releases In Zenith-RCA Litigation.**

Nature of evidence to be offered.

Hazeltine offers to prove, by competent evidence, unless Zenith will admit the facts, that on or about September 27, 1957, Zenith gave general releases to Radio Corporation of America, General Electric Company and Western Electric Company, or one or more of them; that said releases were in the form, or substantially in the form, of the release which is attached as an exhibit to this offer of proof; that said releases were given in connection with the settlement of the counterclaims of Zenith and Rauland against RCA, General Electric and Western Electric, in the case which was then pending in the United States District Court for this District, *Radio Corporation of America* v. *Zenith Radio Corporation and The Rauland Corporation,* Civil Action No. 48 C 1818.

Purposes and grounds of the offer of evidence.

Hazeltine offers to prove the aforesaid releases and surrounding circumstances for the purpose of showing that by the counterclaim embodied in Zenith's Proposed Findings and Conclusions, it is trying to collect for a second time for the claims of damage for which it
1746 has already collected once, and which claims were barred by the aforesaid release or releases.

As set forth in Hazeltine's Motion and Memorandum accompanying this offer of proof, Zenith has taken the position that Hazeltine was a co-conspirator in connection with the alleged conspiracy and pools which were the subject matter of its counterclaims in the Zenith-RCA litigation; the damage claims which Zenith now makes against Hazeltine are almost entirely, if not totally, based on or would result from the alleged restrictive practices of the

alleged conspiracy and pools taking place within the period covered by the releases; and therefore said releases bar the claims against Hazeltine as an alleged co-conspirator.

1747 To All To Whom These Presents Shall Come Or May Concern, Greeting: Know ye, That Zenith Radio Corporation and The Rauland Corporation, each a corporation organized and existing under and by virtue of the laws of the State of Illinois, for and in consideration of the sum of One Dollar ($1.00) lawful money of the United States of America and other good and valuable consideration, to them in hand paid by *_____, the receipt whereof is hereby acknowledged, have each remised, released and forever discharged, and by these presents does each for itself and its respective subsidiaries, successors and assigns remise, release and forever discharge the said *_____ and its subsidiaries and their respective successors and assigns of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialities, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty, or in equity, which against said *_____, its subsidiaries and their respective successors and assigns, said Zenith Radio Corporation and The Rauland Corporation and each of them ever had, now has or which each of them and their respective subsidiaries, successors and assigns, hereafter can, shall or may have for, upon or by

* Insert
"Radio Corporation of America," or
"General Electric Company," or
"Western Electric Company."
This release may not be changed orally.

reason of any matter, cause or thing whatsoever from
1748 the beginning of the world to the day of the date of
these presents, not including however, claims, if any, for unpaid balances on any goods sold and delivered.

In Witness Whereof the said Zenith Radio Corporation and The Rauland Corporation have each caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer on the ..... day of September, nineteen hundred and fifty-seven.

In the Presence of:

.....

In the Presence of:

.....

Zenith Radio Corporation,
By .....
The Rauland Corporation,
By .....

State of Illinois, }
County of Cook. } ss.

On the ..... day of September, nineteen hundred and fifty-seven, before me came .....
to me known, who, being by me duly sworn, did depose and say that he resides at .....,
that he is ..... of Zenith Radio Corporation, the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

.....,
Notary Public.

1749 State of Illinois, } ss.
County of Cook. }

On the ..... day of September, nineteen hundred and fifty-seven, before me came ....., to me known, who, being by me duly sworn, did depose and say that he resides at ....., that he is ..... of The Rauland Corporation, the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

.....,
Notary Public.

1750 Offer Of Proof As To Analysis Of Defendant's Exhibit 218 By Ernst & Ernst.

Nature of evidence to be offered.

We hereby offer to prove through personnel of Ernst & Ernst, Certified Public Accountants, having an office at 231 South La Salle Street, Chicago, Illinois, that they made a study of Defendant's Exhibit 218, together with DX 216, and underlying and related materials as disclosed in the Summary of Findings and Supporting Details in the matter of Hazeltine Research, Inc. v. Zenith Radio Corporation, filed herewith, and that they made the findings and came to the conclusions therein stated.

Purpose and grounds for offer of evidence.

The purpose of this offer of proof is to establish the defects in said Exhibit set forth in Hazeltine's motion and brief.

1752 Offer Of Proof As To Zenith's Annual Reports And Financial Information.

Nature of Evidence to be Offered.

Hazeltine offers to prove the publication of Zenith's Annual Reports for the years 1947 through 1963, unless Zenith will admit the authenticity of the same, and offers to prove Zenith's gross sales and net profits after taxes for the year 1964.

Purpose and Grounds for Offer of Evidence

The purpose of this offer of evidence is for a variety of reasons as follows:

(a) To prove by said annual reports, as admissions of Zenith, that such sales operations as Zenith carried on in Canada and England (there were no sales attempts in Australia) after the 1957 settlement and during the 1958-1963 period were highly satisfactory, or if not, that Zenith's problems resulted from other factors such as the Canadian tariff and Japanese low price competition.

(b) To prove that Zenith has been in the production and sale of radios in the United States since about
1753 1923, and of television since about 1948.

(c) To show Zenith's accounting practices, and other Zenith financial information, in connection with proof of the fact that Zenith's Exhibit 218 cannot constitute the basis for a finding as to the measure of damages.

1755 **Offer Of Proof Of Certain Tariffs, Charges And Taxes In Effect In Australia, England And Canada During 1959-1963.**

Nature of evidence to be offered.

Hazeltine offers to prove by competent evidence the existence of the tariffs, charges and taxes in Australia, England and Canada during the 1959-1963 period as set forth below.

Purpose and grounds of the offer of evidence.

The purpose of this evidence is to establish the existence of the high tariffs and taxes as intervening causes which made the import of television sets into Australia almost impossible as a financial matter, and as to the other two countries, made imports impractical and materially affected the profits, if any, which could have been realized from imports.

Specific Tariffs and Taxes

I. Australia

A. Tariff

The tariff on television sets in Australia during the applicable period was divided into two parts (Tariff Classification No. 181 (E) (2) (a)). The tariff for the picture
1756 tube was six pounds plus 12½% of the selling price f. o. b. the United States port of export. The tariff for the receiver less the picture tube was 25 pounds plus 45% of the selling price. The tariff for radios (Tariff Classification No. 181(E)(1)) was five pounds plus 45% of the selling price. During the applicable period, the average value of the Australian pound was the equivalent of $2.24 in United States dollars.

Thus, the tariff was 31 pounds ($69.44) plus 12½% of the

price of the picture tube and 45% of the price of the receiver, and for radio it was five pounds ($11.20) plus 45% of the selling price. On a $136.80 television set (Zenith's 1962 average price), the duty would be $121.25, considering the picture tube to be priced at $30.00, which gives Zenith the benefit of any doubt as to its price.

B. Taxes

A sales tax of 25% was imposed on both radios and television. Where those products were imported, the base for computation of the tax was 120% of the products' value plus the custom duty. Thus, in the case of the $136.80 imported television set, the tax would be $71.35, or $37.15 more than the tax on a locally manufactured set.

II. Canada

A. Tariff and surcharge

In Canada during the period from 1959 through 1963, the tariff for radios and for television (Tariff Classification No. 445d) was the same. The basic tariff on these products was 20% of the United States plant price to United States dealers. From June 25, 1962 to February 19, 1963 an additional 10% surcharge was imposed. From February 20, 1963 to March 31, 1963, the surcharge was 5%. After April 1, 1963, there was no added surcharge. Thus, during the applicable period the tariff and surcharge was as high as 30% and was never lower than 20%.

B. Taxes

The Canadian sales tax of 11% and the Canadian excise tax of 15% was imposed on both radios and television sets. And the import duty was added into the price before calculation of the sales and excise taxes, which meant that an import was assessed an additional 5.2% (26% of 20%) on its United States price.

III. United Kingdom

A. Tariff

The tariff on both television sets and radios (Tariff 1758 Classification No. 85.15(A).) in the United Kingdom during the applicable period was 20% (except car radios which was 24%) of the f.o.b. port of entry price, i.e., the shipping costs were included in the price for purpose of calculating the duty.

B. Taxes

During the applicable period, a purchase tax of 60% was imposed on both radios and television sets, and the duty was added to the price on which the 60% tax was applied.

C. Embargo

We have just determined that there was a complete embargo on importation of radios, television sets and phonographs from the period 1951 through June 7, 1959. This was administered by the Board of Trade and effectively prevented any shipments of these products into England during this period. From July 7, 1959, a general license was available for importation of these items except that certain component parts of the radio and television receiver sets, such as tubes, transistors, valves and other items, could not be imported until after November 9, 1959.

1760 Offer of Proof as to Differences in Requirements and Standards for Television Sets in the United Kingdom, as Compared to the United States.

Nature of evidence to be offered.

Hazeltine offers to prove by the testimony of Bernard D. Loughlin, vice president for research of Hazeltine, the minimum changes which would have to be made in the construction of a United States television set during 1959-1963 to enable the same to be sold and used in the United Kingdom. Attached hereto as an Exhibit is a list of such minimum changes.

Purpose and grounds of the offer of evidence.

At the trial, Zenith's witness, Kaplan, and its counsel, took the position that the changes necessary to adapt a United States television set for use in the United Kingdom was so minute that "all the changes that were necessary to be made, the distributor could make in a back room with a screw driver" (R. 846, 1265).

The offered evidence has two purposes. First, it shows that contrary to Zenith's contention, the many changes which would be required as a minimum, are so extensive as to have a very specific bearing on the question of costs and alleged profit margin on export of sets to the United Kingdom. The changes are so great that the sets would either have to be produced or completed on a sep-
1761 arate assembly line, or if altered, a substantial undertaking would be involved, affecting both costs and desirability of the end result.

The second reason for this offer is that the "change with a screw driver" story is so obviously untrue as to substantially impair, if not destroy, any probative force of the testimony of the witness Kaplan. It shows that

either he was testifying carelessly, or that in fact he had no knowledge of competitive problems and conditions in England.

1762 **Proffered Testimony of Bernard D. Loughlin as to Changes in Zenith Monochrome Television Receiver Required to Accommodate it to British Broadcast Standards.**

The circuit diagrams of Zenith monochrome television receivers, as published in Sams Photofact Folders for the period 1959-1963, were reviewed from the viewpoint of the minimum changes which would be required to enable them to provide commercially acceptable pictures from programs broadcast in accordance with British standards. From this particular viewpoint, it did not appear that there were any significant differences between the several receivers, and Zenith Chassis 16G20 (1961) was selected as typical.

Following is a statement of the minimum number of changes which would be required, in accordance with good engineering practice to enable the Zenith 16G20 receiver to operate from a British television signal, the necessary changes being stated in connection with each major difference in the broadcast standards of the British system and the U. S. system.

1. Broadcast channels. The U. S. system provides twelve broadcast channels, seven high VHF and five low VHF. The British system provides thirteen channels, eight high VHF and five low VHF, but two of the low VHF channels are entirely outside of the range of any U. S. channels.

1763 Changes required. Two new low VHF channel strips and one new high VHF channel strip, not available in the U. S., would be required for the Zenith

turret turner. Each such strip contains several coils and eight switch contact points.

2. Channel spacing. The U. S. picture carrier is 4.5 Mc. below the sound carrier, while in the British system the picture carrier is 3.5 Mc. above the sound carrier. In the receiver for both systems, the high—low relationship is reversed in the intermediate-frequency channel. The standard U. S. intermediate-frequency corresponds to one of the low VHF channel frequencies of the British system.

Changes required. The intermediate-frequency of the receiver must be changed to avoid interference from the British station broadcasting on the U. S. intermediate frequency. Therefore, the intermediate-frequency circuits of the set must be redesigned for different center frequencies and must also be redesigned to pass a narrower band of frequencies, due to the different picture—sound carrier spacing. In addition, the intermediate-frequency rejection filters of the tuner require redesign because of the different intermediate frequencies. The output circuit of the tuner must also be changed to the different intermediate frequency. While each of the foregoing cir-
1764 cuits is adjustable for alignment, the range of adjustment is not sufficient to accommodate the foregoing required changes. The preferred was of making the foregoing changes would be the replacement of the eleven intermediate-frequency coils. An alternative, at some sacrifice in performance, would be to add capacitors across the coils. In addition, the sound trap in the video amplifier output circuit must be redesigned for 3.5 Mc. instead of 4.5 Mc. This change would preferably be made by replacing the trap unit.

3. Polarity of modulation. The U. S. standards specify negative modulation, that is, a signal in which the strength increases as the picture area is darker, while the British specifies the opposite, that is, positive modulation.

Changes required. The first change required is to reverse the connection of the video detector tube and change the bias on the video amplifier. The simplest additional change would be to replace the dual-pentode automatic-gain-control keyed sync separator and noise limiter with a dual triode, one half connected as a simple sync separator and the other half as a keyed automatic-gain-control tube, simultaneously changing the connection of the automatic-gain-control section from the output of the video amplifier to the output of the video detector. These changes
1765 will result in an automatic-gain-control of degraded but possibly acceptable performance. To retain the automatic-gain-control performance of the original set would require the addition of another tube and several circuit elements to permit operation on the British positive modulation signal.

4. Scanning. The U. S. standards provide for scanning the picture tube at 30 frames (60 fields) per second, each frame of 525 lines. The British standards specify 25 frames (50 fields) per second, each frame of 405 lines, so that the British line-scanning frequency is approximately 10 kc. versus the U. S. of approximately 16 kc.

Changes required. In the vertical scanning oscillator, one resistor would require replacement. In the horizontal scanning oscillator, the horizontal output transformer, one of the most critical and costly elements of the receiver, must be replaced. In addition, the horizontal hold control coil and at least three capacitors must be replaced.

5. Sound signal channel. The U. S. standards specify the transmission of the sound signal via frequency modulation (FM), while the British standards specify amplitude modulation (AM).

1766 Changes required. Changes in sound signal channel in converting from FM to AM are complicated by the fact that with the British system it is no longer

possible to use the so-called "intercarrier sound" circuit, the circuit by which a portion of the amplification of the sound signal occurs in the video-signal channel. Among the changes that must be made in the sound channel are the following: The 4.5 Mc. sound intermediate-frequency amplifier and limiter must be replaced by a 38.15 Mc. amplifier and the connection must be changed from the video detector to the third video IF amplifier. This sound amplifier circuit includes new tuned circuits (two coils), a new tube, and several resistors and condensers. A separate automatic-gain-control (AGC) should be provided for the sound channel to accommodate slight detuning of the tuner. The present high gain (FM) detector must be replaced. The simplest adequate replacement is a dual-diode-triode tube connected as a combined AM detector, AGC detector, and audio amplifier.

6. Power supply. U. S. domestic power lines are generally 120 volt, 60 cycle, while the British is 240 volt, 50 cycle.

Changes required. The power transformer must be changed. This is one of the most expensive items of the receiver.

1767 7. Cabinets. While not a matter of standards, as a matter of practice for reasons of economy, the majority of the U. S. television receivers are housed in metal cabinets. The majority of the British receivers are housed in the more expensive wooden cabinets. This difference is related to the popular conception that the British 240 volt power supply (versus U. S. 120 volt) creates an unacceptable shock hazard when the set is housed in a metal cabinet.

The only praticable way of producing a Zenith receiver, even in moderate volume, for sale in England would be to set up a separate production assembly line, either in the U. S. or England. Conversion of completed

U. S. receivers, as described above, would result in a receiver wholly noncompetitive, both because of the cost of the replacement components and the cost of the labor in making the conversion. Production of receivers in the U. S. with omission of the parts to be replaced is a possibility, but this would increase the cost of the partially produced sets and would require assembly production lines in the U. S. or England in order to produce a receiver at a competitive cost. Conversion of the U. S. receivers to accommodate British standards by a mere technician or serviceman, set by set, would be utterly impracticable, either from a technical point of view, and it is believed, as a matter of economics.

Offer of Proof of Licensing Practices of the Australian "Pool".

Nature of evidence to be offered.

Hazéltine offers to prove by competent evidence the following:

(a) Form of patent License No. 7, offered by and made available by Australian Radio Technical Services & Patents Company Pty. Limited (A.R.T.S.), for the period from January 1, 1961 to December 31, 1965, containing no restriction on imports (copy of said Form No. 7 is attached as an Exhibit).

(b) Proof that extensions of License No. 6 (DX 193) which was for the period from January 1, 1955 to June 30, 1958, and which contained no restrictions on imports, were granted extending their term to December 30, 1960.

(c) Proof that licenses actually were issued or in effect during the 1959-1963 period permitting the import of radio and television sets, and that licenses permitting the import of Zenith radio and television sets could have been obtained.

Purpose and grounds of the offer of evidence.

The purpose of this offer of proof is to furnish evidence that since at least January 1, 1951, there have been no provisions in the licenses available to manufacturers
1770 and importers which would have prevented the import of television sets and radios covered by the claims of the licensed patents. We believe this is already clear on the record but are nevertheless making the additional evidence of proof.

The significance of this evidence is that it shows first, that the alleged restrictions on imports referred to in Zenith's Finding XXXIV did not exist during any relevant period and that the finding is totally without any basis, and secondly, that the claim of alleged damage caused by the "pool" is entirely without foundation since the alleged restrictions were non-existent.

1771 Licence No. 7.

An Agreement made this ..... day of ..... 19.... Between Australian Radio Technical Services & Patents Company Pty. Limited having its registered office at 47 York Street Sydney in the State of New South Wales (hereinafter called "the Grantor") of the first part, And ..... of ..... (hereinafter called "the Licensee") of the second part.

Whereas the Grantor has the right to grant licences to the extent purpose and for the period of this agreement for all Australian Letters Patent owned or controlled by Amalgamated Wireless (Australasia) Limited, Standard Telephones & Cables Pty. Limited, N. V. Philips' Gloeilampenfabrieken, Neutrodyne Proprietary Limited, Electric and Musical Industries Limited and Pye Limited.

And Whereas the Licensee claims to be a bona fide manufacturer of broadcast sound receivers and/or television

receivers and/or radio-gramophones and as such manufacturer has applied to the Grantor to grant and the Grantor has agreed to grant to the Licensee a licence under the Letters Patent and upon the terms and conditions hereinafter mentioned and in consideration of the royalties herein reserved and assessed upon the basis agreed between the parties as being convenient. Now It Is Hereby Agreed As Follows:—

1. (a) The expression "Broadcast Sound Receiver" when herein used shall mean broadcast receiving apparatus which is designed to incorporate valves (whether or not equipped with the valves themselves) and which is designed to receive and translate modulated electrical oscillations broadcast to the public for sound reception. Such expression does not include valves or cathode ray tubes whether or not incorporated in the apparatus nor separate components but shall include sets of component parts and/or any electronic device designed to be used in association with such broadcast sound receiving apparatus.

(b) The expression "Radiogramophone" when herein used shall mean an instrument which is designed to incorporate valves (whether or not equipped with the valves themselves) and which may be used for the reproduction of sound through an electrically operated loudspeaker alternatively from (i) apparatus designed for the reception and translation into sound of modulated electrical oscillations broadcast to the public and (ii) gramophone apparatus (such as turntable, and pick-up) designed for the translation into sound of vibrations recorded on a disc sound record. Such expression does not include valves or cathode ray tubes whether or not incorporated in the instrument nor separate components but does include playing desks designed for use in combination with broadcast sound receivers and shall include sets of component parts.

(c) The expression "Television Receivers" when here-

in used shall mean apparatus (whether or not equipped with electron discharge devices or equivalent de-
1772 vices) which is intended to receive and translate electrical oscillations modulated by vision and associated sound signals which are broadcast to the public and which is intended for use for entertainment or education purposes or is of a type normally supplied to the public for domestic use Provided However that such expression shall include:—

(i) the following apparatus combined therewith or sold for combination therewith namely apparatus intended for the reception and translation of electrical oscillations modulated by sound signals which are broadcast to the public but are not accompanied by vision signals (hereinafter referred to as "sound only receiving apparatus") apparatus intended for the reproduction of sound from records (hereinafter referred to as "gramophone apparatus") and signal boosting apparatus;

(ii) television receiving apparatus of the kind supplied by a broadcast television relay service as the subscribers' terminal units;

(iii) sets of component parts as hereinafter defined.

Provided Further that the expression "Television Receivers" shall Not include:—

any broadcast relay apparatus other than the terminal units referred to as included under item (ii) above, or Television Receivers adapted for producing a picture larger than 30 square feet.

(d) The expression "Set of Component Parts" for broadcast sound receivers and/or television receivers and/or radiogramophones when herein used shall mean a number of component parts which are capable of being as-

sembled so as substantially to constitute a broadcast sound receiver and/or television receiver and/or radiogramophone.

(e) The word "Valve" (or "Valves") when herein used shall be deemed where the context so admits to include inter alia an electron discharge device a multiple valve a valve for rectifying electric current and other apparatus used in direct substitution for a valve.

(f) The expression "Place of Public Entertainment" when herein used shall mean a place of public entertainment existing at any time during the subsistence of this License.

(g) The expression "Private or Domestic Use" as used herein shall be deemed to include also the use in Public Houses Hotels Boarding Houses Restaurants Cafes Tea Houses Factories Warehouses Shops and/or small Dance Halls (only) Provided That such are not attached to or do not form part of a theatre or cinema.

(h) The expression "Selling" when herein used shall be deemed to include selling on the so-called time payment or hire-purchase system.

(i) The word "Plate" when herein used shall be deemed to include "transfer" or "[illegible]er".

2. (a) The Grantor grants and agrees to grant to the Licensee subject to the terms and conditions herein appearing a personal non-exclusive non-assignable licence to use and exercise all or any of the inventions the subject of Letters Patent applicable to broadcast sound receivers television receivers and radiogramophones respectively in respect of which and insofar as the Grantor now has or may hereafter during the subsistence of this Licence have power to grant licences or sub-licences for the purposes and on the terms hereof (which Letters Patent are herein collectively called "the said Letters Patent") for the purposes of manufacturing using selling or letting on hire within

the Commonwealth of Australia and such territories as may from time to time be administered by the said Commonwealth under mandate or otherwise (i) broadcast sound receivers (ii) television receivers and (iii) radiogramophones but in each case only for private or domestic
1773 use or for the purpose of lectures or demonstrations in any institution of a charitable educational philanthropic or religious character (such lectures or demonstrations not being open to the public generally and not being held for payment) and not otherwise. Such Licence shall be deemed to have commenced on the first day of January, 1961 and shall continue until the 31st day of December, 1965 unless previously revoked as hereinafter provided.

(b) The Licensee undertakes that all companies or firms now or hereafter during the subsistence of this Licence directly or indirectly owned or controlled by the Licensee and all companies or firms formed by the Licensee during the subsistence of this Licence and directly or indirectly owning or controlling the Licensee shall if engaged in any field of business to which this Licence is applicable forthwith accept licences from the Grantor upon the same terms as this Licence and the Grantor agrees to grant such licenses accordingly. If the Licensee shall become directly or indirectly owned or controlled by a company or firm which does not hold or forthwith obtain a licence from the Grantor upon the same terms as this Licence the Grantor shall be at liberty to revoke this Licence.

(c) The Grantor covenants and agrees to provide to the Licensee an accurate list of the said Letters Patent current at the first day of January, 1961 and to advise the Licensee at least annually thereafter of changes additions and revisions to this list occasioned by expiration of any of the said Letters Patent or by the granting of new Letters Patent or by any other cause.

3. (a) Nothing contained herein shall be deemed to license the Licensee to manufacture import sell or let on hire—

Valves or cathode ray tubes of any kind; or

Any other individual component part of broadcast sound receivers radiogramophones or television receivers other than in and forming part of a broadcast sound receiver radiogramophone or television receiver Provided Always that the Licence shall not license the Licensee to manufacture sell or let on hire the material of or any material used in any component part.

The expression "Component Part" when herein used shall mean any individual constituent part of broadcast sound receivers, radiogramophones and/or television receivers.

(b) The Licence hereby granted shall not authorise the use or exercise of broadcast sound receivers or any television receivers or any radiogramophones for any purpose whatsoever other than the purposes herein set forth and in particular shall not authorise the use or exercise of any of the said apparatus by operating the same for revenue-earning purposes. Nor shall this Licence authorise the use or exercise of any of the said apparatus for purposes of receiving sound or television broadcasting or operating any radiogramophones in relation in any manner to the service of any place of public entertainment or of any place in which any business requiring any licence from public authority is conducted (except insofar as such use is authorised under the definition of "Private and Domestic use") or for use with a microphone.

(c) The Grantor agrees to take all necessary action either at law or in equity to prevent any person or persons firm or firms corporation or corporations and company or companies whomsoever and whatsoever manufacturing or

selling or letting on hire broadcast receivers television receivers and/or radiogramophones which embody or utilise or are designed to embody or utilise any invention the subject of the said Letters Patent during the term of this Licence without payment of the royalties specified hereunder.

4. The Licensee agrees with the Grantors as follows:—

(a) From time to time on the request of the Grantor to furnish to the Grantor diagrams and/or samples of all broadcast sound receivers and/or television receivers and/or radiogramophones for the time being manufactured sold or let on hire by the Licensee pursuant to this Licence.

1774 (b) To attach or cause to be attached in a prominent position to all broadcast sound receivers television receivers and radiogramophones sold or hired or offered or exposed for sale or hire by the Licensee (or in the case of a set of component parts for such apparatus to supply for attachment to the assembled apparatus by the constructor thereof) a plate marked by the Grantor with a Serial Number determined by the Grantor and indicating the number of valves (as hereinbefore defined) and bearing the following words:—

With respect to broadcast Sound Receivers and/or Television Receivers and/or Radiogramophones:

"No..... This instrument was manufactured under a Licence granted by Australian Radio Technical Services and Patents Company Pty. Limited in respect of Letters Patent controlled by it for the reception in the Commonwealth of Australia and such territories as may from time to time be administered by the said Commonwealth of Sound and/or Television broadcast by wireless but only for private or domestic use and not for operation for any public or commercial or revenue-earning purpose. N.B.—A Post Office Licence is necessary."

Plates complying with the above may be obtained from the Grantor and no such plate shall be removed from any broadcast sound receiver or television receiver or radiogramophone to any other apparatus without the previous consent in writing of the Grantor and no broadcast sound receiver or television receiver or radiogramophone shall be or be deemed to be licensed hereunder unless such a plate be attached thereto and the absence of such a plate so marked from any broadcast sound receiver or television receiver or radiogramophone shall be conclusive evidence that the same is not licensed hereunder. In addition if required by law the Licensee shall further mark in accordance with the requirements of the Patent Act of the Commonwealth of Australia or any amendments thereof made during the subsistence of this Licence all broadcast sound receivers and/or television receivers and/or radiogramophones covered by this Licence which are manufactured sold let on hire or put into use by the Licensee.

(c) So far as is reasonably practicable to make the conditions of this Licence a condition of every sale or hire binding upon and observable by every purchaser or hirer of any broadcast sound receiver and/or television receiver and/or radiogramophone sold or hired or offered or exposed for sale or hire by the Licensee.

(d) To pay to the Grantor by way of rayalty:—

(i) In respect of all complete broadcast sound receivers and complete radiogramophones sold let on hire or put into use by the Licensee during the subsistence of this Licence whether or not such apparatus embodies or utilises or is designed or intended to embody or utilise any invention the subject of any of the said Letters Patent royalties upon the following scale based on the Licensee's net turnover as hereinafter defined in this sub-Clause (d) (i) —

½ of 1% (one-half of one per centum) of the Li-

censee's net turnover of broadcast sound receivers and/or radio-gramophones. Provided that such royalty shall not exceed two shillings (2/-) in respect of each such sound receiver or radio-gramophone.

For the purpose of this sub-Clause (d) (i) the expression "net turnover" shall be ascertained by multiplying the number of each type of complete broadcast sound receivers including valves and/or complete radiogramophones including valves sold let on hire or put into use by the Licensee by the highest price excluding Sales Tax and excluding the price of batteries of any kind at which each such type is sold in each month at genuine arms-length trading to the Licensee's largest distributor or customer in which the Licensee has no interest by share-holding or otherwise, "Largest distributors or customers" shall
1775 mean that distributor or customer or alternatively those distributors or customers enjoying the longest discount or best price and who alone absorbs or together absorb not less than twenty per centum of the net turnover of the Licensee.

(ii) In respect of all complete television receivers sold let on hire or put into use by the Licensee during the subsistence of this License whether or not such apparatus embodies or utilises or is designed or intended to embody or utilise any invention the subject of any of the said Letters Patent royalties upon the following scale based on the Licensee's net turnover as hereinafter defined in this sub-Clause (d) (ii)—

Television Receivers which incorporate both sound only receiving apparatus and gramophone apparatus.	Television Receivers which incorporate sound only receiving apparatus or gramophone apparatus but not both.	All other Television Receivers.
¾%	⅞%	1%

For the purposes of this sub-Clause (d) (ii) the expression "net turnover" of television receivers shall be ascertained by multiplying the number of each type of complete television receiver including valves sold let on hire or put into use by the Licensee by the highest price excluding Sales Tax and excluding the price of batteries of any kind at which each such type is sold in each month at genuine arms-length trading to the Licensee's largest distributor or customer in which the Licensee has no interest by shareholding or otherwise. "Largest distributors or customers" shall mean that distributor or customer or alternatively those distributors or customers enjoying the longest discount or best price and who alone absorbs or together absorb not less than twenty per cent of the net turnover of the Licensee.

(iii) In respect of all broadcast sound receivers and/or television receivers not complete with valves cathode ray tubes cabinet and loudspeaker or any of them and in respect of all radiogramophones not complete with valves cabinet loudspeaker pickup and motor or any of them sold or let on hire or offered for sale or hire by the Licensee during the subsistence of this Licence whether or not such apparatus embodies or utilises or is designed or intended to embody or utilise any invention the subject of any of the said Letters Patent the same percentages of the Licensee's net turnover as in the preceding sub-Clauses (d)(i) and (d)(ii) respectively hereinbefore set forth provided that the price of each incomplete broadcast sound receiver or television receiver or radiogramophone shall be determined by adding

to the sale price thereof an amount being the total of the sale price of valves cathode ray tubes loudspeaker cabinet and other components (excluding batteries) necessary to constitute a complete broadcast sound receiver or television receiver or radiogramophone such price to be certified by a Public Accountant to be appointed by the Grantor and when so determined shall be included as part of the Licensee's net turnover for the particular year in which the same shall be sold let on hire or offered for sale.

Provided Always that in respect of broadcast sound receivers or television receivers or radiogramophones manufactured or sold by the Licensee which employ any
1776 Letters Patent under which the Grantor may become liable to pay a royalty to a third party or to share a royalty with a third party the Grantor shall offer to the Licensee and the Licensee may accept the right to the inclusion in this Licence of that Letter Patent on payment to the Grantor of an additional royalty of such amount as may be required to enable the Grantor out of the total royalties paid by the Licensee both to retain the royalties payable under this sub-Clause and to satisfy the terms of the license or agreement under which royalty is or shall be payable by the Grantor. The Grantor shall if so required in writing by the Licensee furnish the licensee with proof of the third party's claim to royalty. The Grantor shall upon request of the Licensee and the Licensee shall upon request of the Grantor permit the Grantor to examine free of charge diagrams and/or samples of broadcast sound receivers and television receivers and radiogramophones manufactured or proposed to be manufactured by the Licensee and advise whether such apparatus embodies or utilises any invention the subject of any of the said Letters

Patent under which the Grantor may be liable for royalty to a third party as herein mentioned. The Grantor shall inform the Licensee of the amount of any such additional royalty and any such additional royalty shall be shown separately in the returns hereinafter mentioned.

(e) Keep proper and accurate and separate accounts of everything necessary to ensure an accurate return to be made each calendar month in conformity with any of the provisions of this Licence showing the royalties payable under the last preceding sub-Clause (d) and to render such accounts within thirty (30) days of the last day of each calendar month in each year to such person as the Grantor may designate to the Licensee from time to time and to accompany each such account with a remittance based on the net turnover of the Licensee in respect of the royalties thereby shown to be due. In the event that the Licensee fails to keep the books of account above-mentioned in addition to any other rights and remedies the Grantor may have the Licensee agrees to pay to the Grantor the amount of royalty which the Grantor may by notice in writing to the Licensee stipulate as the amount estimated to be due unless the Licensee proves that the royalty due should be some other amount.

(f) The Licensee shall furnish monthly returns verified by the Auditor of the Licensee or by a Statutory Declaration of the proper officer and in the event of any dispute shall permit the Grantor to appoint a Public Accountant to inspect the books and accounts of the Licensee relative to this Licence.

(g) To pay to the Grantor on the execution hereof for the first yearly period of this Licence and thereafter so long as the Licensee shall continue to manufacture sell or hire or offer or expose for sale or hire broadcast sound receivers and/or television receivers and/or radiogramo-

phones in advance each year during the period of this License the sum of one hundred and fifty pounds (£150) as minimum royalty for the yearly period, which sum shall in no event be returnable.

(h) Not at any time during the subsistence hereof to dispute or impeach or to assist others to dispute or impeach the validity of the said Letters Patent.

(i) Not to assign transfer mortgage grant sub-licences under or in any manner part with the possession or control of this Licence or any part of it without the previous written consent of the Grantor.

5. During the subsistence of this Licence the Grantor will keep the Licensee fully indemnified against costs and damages arising in connection with all actions proceedings claims and demands which may be made against the licensee by any third party who seeks to establish or establishes to the satisfaction of a court of competent jurisdiction within the Commonwealth of Australia and such territories as may from time to time be administered by the said Commonwealth under mandate or otherwise his right to restrain the use and exercise by the Licensee under the Grant contained under this Licence of any of the 1777 said Letters Patent on the ground that such use and exercise is an infringement of any legal rights or legal interests of such third party in such Letters Patent Provided Always that the Grantor is immediately informed of the institution of such proceedings and is given full and complete rights to take over at its own cost and through its own solicitors the defence of such proceedings if it so requests and in that event the Licensee shall assist the Grantor in every reasonable manner but the Grantor shall be at liberty to compromise submit to judgment in abandon discontinue or otherwise dispose of the same as to it may seem expedient.

6. The Grantor may revoke this Licence upon the happending of any of the following events:—

(a) If any royalty return or any royalty shown to be due is not rendered or is unpaid for thirty (30) days after the last day of any preceding month and remains unrendered or unpaid for seven (7) days after notice in that behalf from the Grantor; or

(b) If there be any breach on the part of the Licensee of any other of the agreements herein contained and the same be not remedied made good or desisted from within seven (7) days of notice in that behalf from the Grantor; or

(c) If the Licensee shall become bankrupt or compound with his creditors or (being a company) shall go into liquidation whether voluntary or compulsory;

any revocation of this Licence shall be without prejudice to all claims of the Grantor against the Licensee for outstanding royalties or prior breaches of this Licence or otherwise.

7. Notwithstanding anything herein contained this Agreement and Grant shall not apply to and the Grantor hereby covenants that he will not charge or demand any royalty in respect of broadcast sound receivers and/or television receivers and/or radiogramophones manufactured and exported by the Licensee beyond the Commonwealth of Australia and such territories as may from time to time be administered by the said Commonwealth under mandate or otherwise.

In Witness Whereof the parties hereto have duly executed these presents the day and year first hereinbefore written.

The Common Seal of Australian Radio Technical Services & Patents Company Pty. Limited was hereunto affixed by _____ and _____ two Directors of the Company by order of the Board and in the presence of _____ Secretary.
(Seal.)

Signed Sealed and Delivered by _____
in the presence of _____.
(Seal.)

1778 Licence No. 7

Australia

Dated the ____ day of _____, 19____

Australian Radio Technical
Services and Patents
Company Pty. Limited

to

_____

Licence

To use and exercise certain Australian Letters Patent for certain specific purposes as within in connection with Wireless Broadcast Sound Receiving Apparatus and/or Radiogramophones and/or Television Receiving Apparatus.

2070 OFFER OF PROOF BY HAZELTINE RESEARCH, INC., MADE ON 3/31/65 (PAGES 192-94 OF TRANSCRIPT OF PROCEEDINGS OF 3/31/65).

United Kingdom Embargo.

The Import, Export and Customs Powers (Defense) Act, 1939 of the United Kingdom ("U. K.") in § 1(1) gave the Board of Trade complete powers to regulate all imports and exports and to make such orders to accomplish this, as they saw fit. The Board of Trade issued the following orders for implementation of this Act:

First Order—Import of Goods (Control) Order 1940 No. 873 (in force until 1954). No goods could be imported without a license issued by the Board of Trade.

Second Order—Import of Goods (Control) Order 1954 No. 23 (which is still in operation today). No goods could be imported without a license issued by the Board of Trade. (Second Order was same as First except for exceptions not relevant).

Both Orders established a license procedure for the issuance of two kinds of licenses:

1) general license—applied as to certain listed commodities covering some 200 pages (the list did not include radios, television sets or phonographs). Only items on this list could be imported under a general license from the U. S.

2) special licenses—these were issued only under very exceptional circumstances and not for commodities as such but for particular shipments. For example, if a U. K. child were dying in an English hospital, importation of an iron lung from the U. S. might be allowed. Mr. L. F. Standen, a senior officer at the

Board of Trade, No. 1 Victoria St., London S. W. 1 reviewed the files for this period and can state that no licenses were issued or could have been issued for radios, television sets, or phonographs.

2071 In the Notice to Importers No. 910, issued by the Board of Trade in May 1959 (no day set forth in the Notice), the General License theretofore existing was replaced by an Open General License which permitted the importation of all goods after June 7, 1959 except those listed. The list did not include radios, television sets or phonographs but did include valves, tubes, crystal diodes, crystal triodes and other crystal valves. Accordingly, radios and television sets could be imported after June 7, 1959.

In the Notice to Importers No. 920, issued by the Board of Trade effective November 9, 1959, only transistors and parts thereof were prohibited from being imported from the U. S.

In the Notice to Importers No. 932, issued by the Board of Trade effective February 1, 1960, the restrictions on importation of transistors and parts thereof were removed.

Mr. Standen stated that these orders and notices were effective in blocking all imports of these commodities during their effective periods and that no special licenses were or could have been issued for the importation of these commodities from the U. S.

Failure to obtain a license and any importation without the sanction of the Board of Trade could result in confiscation of the goods and a fine of £500 under § 3 of the Import, Export and Customs Powers (Defense) Act, 1939.

2075 Telefax Western Union.

LLGI54 (01)CDU180
WUH216 UXS 129 TX220/217 1/50 Pd Intl Fr Cd TX Londonlb Via RCA 29 1950

Charles E. Hussey McDermott Will and Emery Millam Chgo

From before 1951 specific import licenses would have been required for domestic radio and television receivers and gramophones and valves tubes crystal diodes crystal triodes and other crystal valves imported into the United Kingdom from the dollar area Stop

For some goods token import schemes allowing small imports on basis of pre-war trade were in force Stop

There was no such scheme for any of these goods Stop

The effect of specific licence requirements plus absence of token import scheme was that no commercial imports of the goods concerned would be license Stop

From 8th June 1959 specific import licenses for domestic radio television receivers and Gramophones were no longer required Stop

From 9th November 1959 specific import licences for valves and tubes including crystal diodes crystal triodes and other crystal valves were no longer required except that specific licenses continued to be required for transistors until 1st February 1960 Stop

Illegal circumvention of import licensing requirements would render person concerned liable to criminal penalties under the Import Export and Customs Powers (Defense) Act 1939 including forfeiture of goods Stop

United States Department of Commerce issued 2076 relevant press notice on 5th November 1959 references F. C. 59/261 and Comm-DC-47291

F Standen Tariff Division Board of Trade London

2077 McDermitt, Will & Emery
111 West Monroe Street
Chicago, Illinois 60603
312-Franklin 2-2000

In a telephone conference on March 31, 1965 with Mr. G. M. Niall of Blake & Riggall, attorneys in Melbourne, Australia, he stated that he has reviewed the matter of importation of radios and television sets and has discussed the question with officials of the Australian Department of Trade. He concluded that no importation of radios and television sets from the U. S., would have been possible from 1951 until February, 1960 unless the U. S. company was importing during the so-called base period of July 1, 1950 to June 30, 1951.

The rules were basically as follows. If a U. S. company was importing so-called luxury goods listed in Category B of the Customs Import Licensing Regulations promulgated by the Department of Trade under the Australian Customs Act during the period of July 1, 1950 to June 30, 1951, then it could thereafter import a certain percentage of its base period imports. This percentage was regulated from time to time and varied between 25 and 40. Special licenses granting exceptions to this procedure were theoretically possible but practically unavailable, due to the Australian Government policy of restricting imports from dollar countries such as the U. S. to an absolute minimum. The officials of the Australian Department of Trade stated to Mr. Niall that it would not have been possible for a U. S. company to import radios and television sets in commercial quantities during the period from before 1951 until February, 1960.

The administration of this procedure was largely a currency restriction since its primary purpose was to reduce

the dollar outflow from Australia. The Reserve Bank of Australia would grant permission to an Australian company to remit dollars to an American importer if and only if a license to import was available from the Australian Department of Trade.

CEH.

2078 EXCERPTS FROM ZENITH ANNUAL REPORTS.

1957

pp. 6-7

"Adverse trading factors such as scarce and expensive dollar convertibility, increasing tempo of import controls, nationalistic protection of local industries, political unrest and upheavals, tended to depress export business generally during the year. Foreign competition reached its highest level of penetration in export markets in 1957 and accounted for a large portion of the world's exports of radio receivers and radio-phonograph combinations.

"Your Company's outlook for export business in 1958 is good, based on the rising acceptance abroad of our excellent performing television receivers and the increasing activities of licensed local assemblers of Zenith products in Latin America.

"In addition, your Company is inaugurating an aggressive program to set up distribution of radio and television receivers in Canada, where it had previously been excluded from participation in the market through the operation of a cartel. Experienced and capable personnel have been employed and arrangements are being made for larger facilities in Toronto and Montreal. The operation in these areas will be conducted as a division of your Com-

pany's subsidiary, Zenith Radio Corporation of Canada, Ltd., which is presently distributing hearing aids throughout the Dominion. It is anticipated that independent distributors will be appointed to handle the distribution of Zenith products in the other areas of Canada."

1958

p. 4

"Zenith Radio Corporation of Canada, previously engaged exclusively in the distribution of hearing aids in Canada, during the year initiated the distribution of radio and television receivers in the provinces of Ontario and Quebec. As a result, sales volume increased substantially, but the expense of moving the operation from Windsor to Toronto (with a new branch operation in Montreal) and the heavy starting costs in connection with the new distribution activities unfavorably affected earnings."

2079 p. 6

"The substantial increase in sales noted above accomplished in a difficult export market does not include a significant volume of purchases of television and radio receivers and phonograph units by Canadian distributors during 1958. During the year, an aggressive sales and operating organization was added to the personnel of the Company's subsidiary, Zenith Radio Corporation of Canada, to initiate the distribution of radio and television receivers to dealers in the provinces of Ontario and Quebec. Four outstanding and experienced independent distributors were appointed to handle the distribution of Zenith products in western Canada. Although there has long been a strong consumer demand for Zenith products in Canada, much work had to be done to establish a dealer organization and the major benefits of Canadian distribution will begin to be felt in 1959."

1959

p. 4

"Zenith Radio Corporation of Canada made substantial progress during the year, but a continuation of the heavy costs in connection with the new radio and television receiver distribution activities unfavorably affected earnings.

"• • •

"A new subsidiary, Zenith Sales Corporation, which will perform the marketing function for Zenith Radio Corporation, commenced operation on January 1, 1960. It will be responsible for sales, distribution, product planning, advertising, sales promotion and market research for television, radio, phonograph and stereophonic home instruments in the United States and export markets."

p. 6

"Another serious deterrent to U. S. exports, particularly of radios, during the year was the severe foreign competition from Japan, which flooded practically all world markets with a wide range of cheap transistor products at very low prices. The impact of Japanese competition has been much stronger in export than in the domestic market.

"Our exports to Europe in 1959 improved slightly due particularly to the appointment in mid-year of an energetic independent distributor in the United Kingdom. For almost 30 years previously, the British market had
2080 been closed to our products because of cartelization and restrictions. Since July, 1959, our exports have been increasing, concentrated, however, in several models which have no direct counterparts in British production.

"• • •

"In the light of the unfavorable trading factors and adverse conditions which exist in many major world markets, 1960 can be another difficult year for U. S. exports.

"The Company's Canadian subsidiary, Zenith Radio Corporation of Canada Ltd., showed marked progress in the sales of all products. The long established Hearing Aid Division continued its steady growth in sales and profits. The Radio and Television Division, established in 1958, doubled its sales over the first year and in the closing months achieved a substantial gain in its percentage of industry sales despite a decline in over-all Canadian industry sales of television receivers. This gratifying performance emphasizes the wide acceptance of Zenith products by the Canadian trade and public.

"Zenith now has a strong distribution network at both the wholesale and retail level throughout Canada, supported by powerful national and local advertising.

"Our Canadian management is confident that Zenith sales and profits together with its percentage of industry sales will continue to rise throughout 1960."

1960

pp. 3-4

"Export sales of radios, television receivers, phonographs and stereophonic high fidelity instruments in 1960 showed a moderate decline from 1959. Major contributing factors to this expected decline were the loss of Cuban sales and the imposition of new or more rigid import restrictions in such important markets as Argentina, Chile, Brazil and Mexico.

"Comeptition from both U. S. and foreign manufacturers was extremely severe in all major overseas markets. Foreign manufacturers had the advantage of low labor rates, enabling them to offer lower priced prod-
2081 ucts.

"Even though a large number of restrictions will continue in major export markets, the outlook for 1961 is optimistic. The anticipated improvement of the balance-

of-payments picture and a new climate of cordiality towards the U. S., especially in Latin America, should assist the U. S. in its promotion of exports and the drive for gradual reduction of foreign trade restrictions.

"Zenith Radio Corporation of Canada, Ltd., in 1960 successfully countered the downward industry sales trend (which began in Canada in 1955) and made important gains in the sale of Zenith television and radio receivers.

"The company's Canadian management is confident that 1961 will see further increases in sales and profits and a rise in its share of industry sales, despite the possibility that total Canadian industry sales may continue to decline. Plans are being readied for a manufacturing operation in Canada when the Canadian subsidiary's annual unit sales volume permits."

1961

p. 2

"Profits of Zenith Radio Corporation of Canada Ltd. were adversely affected during the year by the Canadian government's action which put the Canadian dollar at a discount, rather than the premium position it had previously held, in relation to the U. S. dollar."

pp. 3-4

"Even sales of television reecivers, radios, stereophonic high fidelity and other consumer products were at an all time high in 1961, up 65% from 1960. As in previous years, export operations were hampered by import restrictions and dollar exchange shortages. During the year the severity of foreign competition in many world markets was without precedent. This was particularly true of transistor radios where prices dropped sharply due to over production and heavy inventories in Japan.

"Zenith Radio Corporation of Canada Ltd. made grati-

fying progress during the year, selling more television receivers than in the two previous years combined. Consistent national advertising and the enthusiasm of
2082 distributors and dealers have created a growing demand for Zenith products in the Canadian market."

1962

p. 3

"Profits of Zenith Radio Corporation of Canada Ltd. were again affected as a result of curbs instituted by the Canadian Government. Its action in establishing an exchange ratio which further discounted the Canadian dollar in relation to the U. S. dollar and the imposition of additional tariffs presented serious obstacles to the Canadian operation.

"Other subsidiary companies, in most instances, reported satisfactory operating results in contributing to Zenith's record consolidated sales and earnings."

p. 4

"Export operations during the year continued to be affected by ever-tightening import restrictions and dollar-exchange controls in the major foreign markets. Consumer product exports to Latin America declined substantially from 1961 whereas sales to Europe, Africa and several other markets were improved. Competition from foreign producers, particularly in the Far East, is unprecedented.

"Your Company is, nevertheless, continuing to pursue the development of export policies and plans to effectively cope with the restrictions and competition currently experienced."

1779 IN THE UNITED STATES DISTICT COURT.
(Caption—59-C-1847)

AFFIDAVIT OF LAURENCE B. DODDS.

State of New York, }
County of Queens. } ss.

Laurence B. Dodds, being first duly sworn, on oath states as follows:

1. That he was chief trial counsel for Hazeltine Research, Inc. (Hazeltine) in the trial of the above case, and makes this affidavit in connection with the motion being filed on behalf of Hazeltine requesting that the Findings of Fact and Conclusions of Law heretofore entered be withdrawn and that further proceedings be had in the litigation.

2. That attached hereto is a true, correct, and complete copy of Zenith's Notice of Motion, and Motion for Leave to File Counterclaim, accompanying Affidavit of Francis W. Crotty, and draft of proposed Counterclaims I and
1780 II, all of which were served on counsel for Hazeltine on or about March 26, 1963, but were not filed, Counterclaim I being identical to the Counterclaim which was filed later and stamped May 22, 1963.

3. That he assumed, as he had a right to do, that said Counterclaim stated the issues which Zenith would present and attempt to prove at the trial of the antitrust issues which began February 17, 1964.

4. That the theory of action and of damages stated by Zenith in its proposed Findings and Conclusions came to him as a complete surprise, not having been stated in the Counterclaim.

5. That the so-called proof embodies in Exhibit 218

dealing with the alleged measure of damage was without prior notice to him; that he had not been previously furnished a copy of said Exhibit 218, and as he pointed out this failure to produce placed him at a great disadvantage; and that by reason of its detailed nature he did not have an adequate time to prepare cross-examination as to said Exhibit, nor to prepare to offer substantial answering evidence.

1781 7. That by reason of the failure of Zenith to give him notice of its change in theory from that which was pleaded, he was deprived of the opportunity to investigate the alleged facts and the law involved in such new theory, was deprived of the opportunity to answer and plead the affirmative defenses applicable to said new theory, was deprived of the opportunity to conduct discovery proceedings pertinent under such new theory, and had no adequate opportunity to prepare and introduce defenses to such new theory of action.

Laurence B. Dodds.

Subscribed and sworn to before me this 18th day of March, 1965.

(Seal) *Notary Public.*

Term Expires March 30, 1966.

1782 IN THE UNITED STATES DISTRICT COURT.
(Caption—59-C-1847)

NOTICE.

To: Mr. M. Hudson Rathburn,
Mason, Kolehmainen, Rathburn & Wyss,
20 North Wacker Drive,
Chicago 6, Illinois.

Please Take Notice that at 9:15 A. M. on April 3, 1963, at the pre-trial conference scheduled by the court for this case, we shall present to the court a Motion for Leave to File a Counterclaim herein, a copy of which Motion and Counterclaim are herewith served upon you.

Thomas C. McConnell,
Philip J. Curtis,
Attorneys for Defendant,
Zenith Radio Corporation.

Received a copy of the above and foregoing Notice, together with a copy of the Motion and Counterclaim mentioned therein, this 26th day of March, 1963.

Mason, Kolehmainen, Rathburn & Wyss,
By Warren D. McPhee.

1783 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—59-C-1847) * *

MOTION FOR LEAVE TO FILE COUNTERCLAIM.

Pursuant to Rules 13(a) (e) (f) and Rule 15(a) of the Federal Rules of Civil Procedure, defendant moves the court for leave to file a counterclaim, a copy of which is attached hereto, on the grounds that:

1. Said counterclaim arises out of the matters set forth in paragraphs 12 and 13 of defendant's answer herein and current related unlawful activities of plaintiff occurring since the filing of the answer which activities are the proximate cause of present and continuing damage to defendant sustained after the filing of the answer.

2. Said counterclaim is compulsory and justice requires that it be filed.

Attached hereto and marked Exhibit A is an Affidavit of counsel in support of the Motion.

Thomas C. McConnell,
Philip J. Curtis,
Attorneys for Defendant,
Zenith Radio Corporation.

March ....., 1963.

1784 Exhibit A.

IN THE UNITED STATES DISTRICT COURT.
* * (Caption—59-C-1847) * *

AFFIDAVIT OF FRANCIS W. CROTTY.

State of Illinois, } ss:
County of Cook. }

Francis W. Crotty, being duly sworn, deposes and says:

1. That he is Vice President in Charge of Patents at Zenith Radio Corporation, defendant herein, and one of defendant's counsel in this case.

2. That matters alleged in paragraphs 6-9, Counts I and II of defendant's counterclaim, to which this affidavit is attached, and which are the proximate cause of damages alleged and require the relief sought in said counterclaim, occurred after the filing of the answer herein.

3. That the unlawful conspiracy set forth in paragraphs the subject of the counterclaim and said paragraphs are 12 and 13 of the answer is the same conspiracy which is incorporated by reference in the counterclaim.

1785 4. That the discovery proceedings already conducted by defendant with reference to paragraphs 12 and 13 of the answer revealed evidence in support of both the answer and the counterclaim.

5. That the filing of this counterclaim should in no way delay or prolong the trial of this cause.

Francis W. Crotty.

Subscribed and Sworn to before me this 21st day of March, 1963.

Edith B. O'Connor,
Notary Public.

My Commission expires Jan. 31, 1967.

1786 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—59-C-1847) * *

COUNTERCLAIM.

Zenith Radio Corporation, defendant and counterclaimant, counterclaims against Hazeltine Research, Inc., plaintiff and counterdefendant, pursuant to Rule 13(a) of the Federal Rules of Civil Procedure and says:

Count I.

1. This is a counterclaim for damages and for injunctive relief under the following provisions of the Federal Anti-trust Laws: Sections 1 and 2 of the Act of Congress of July 2, 1890, 26 Stat. 209, as amended, commonly known as the Sherman Act (15 U. S. C. §§ 1 and 2) and Sections 4 and 16 of the Clayton Act, 38 Stat. 731, 737 (15 U. S. C. §§ 15 and 26).

The Parties.

2. Counterclaimant, Zenith Radio Corporation, is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 6001 W. Dickens Avenue, Chicago, Illinois, and is now and has been continuously for more than 43
1787 years last past engaged in the development for sale and use and in the manufacture, sale and use of radio apparatus and receiving sets, and since the advent of television, television receiving sets throughout the United States and in foreign commerce, and during said period has built up a large volume of business in manufacturing and selling as the demand therefor has existed and will continue to exist, and in the shipment and sale of such apparatus in commerce between the various states of the United States and in foreign commerce, and said counter-

claimant is now and has been engaged in said commerce during all of the period above stated and during all times material to this counterclaim.

3. Counterdefendant, Hazeltine Research, Inc., the party plaintiff in this suit, is an Illinois corporation owned and operated as a wholly owned subsidiary of Hazeltine Corporation, a New York corporation, engaged in the manufacture and sale of electronic equipment and devices. Counterdefendant's sole business is research in the radio and TV fields and the licensing of a patent pool in the United States pertaining to radio and television receivers and other electronic products, said pool being the United States counterpart of a number of inter-related territorial patent pools formed and operated in various market areas of the world, pursuant to a combination and conspiracy between counterclaimant, its parent, Hazeltine Corporation, and sundry other persons and corporations, domestic and foreign, as more particularly described and set forth hereinafter.

1788 4. Counterclaimant realleges Paragraphs 12 and 13 of its Answer herein and further asserts that counterdefendant and its parent, Hazeltine Corporation, in furtherance of the conspiracy alleged herein has entered into illegal agreements and arrangements with large foreign companies including General Electric Co. Ltd. of England, Canadian Radio Patents Limited of Canada, Svenska Aktiebolaget Gasacumulator of Sweden and Neutrodyne Proprietary Ltd. of Australia wherein and whereby the inventions and patents of the parties and their co-conspirators have been pooled into mutually exclusive market areas of the world which are thereby illegally blockaded from imports of electronic devices from the United States. Counterdefendant and its parent, Hazeltine Corporation, have thereby agreed with their foreign co-conspirators not to grant licenses under their patents and inventions that

would permit exports from the United States into England, Canada, Australia and other markets and said foreign co-conspirators have in turn refused to issue any licenses for importation into their mutually exclusive territories without the consent of the respective pool members. The domestic patent rights of the foreign co-conspirators are, by agreement between Hazeltine Research, Inc., funneled into the Hazeltine Corporation and said co-conspirators, funneled into the Hazeltine domestic pool by assignments to counter-defendant, Hazeltine Research, Inc.

5. To implement and effectuate the conspiracy, each of said pools has adopted the standard package type of license described herein covering hundreds of unidentified patents and by threats of expensive protracted and ruinous
1789 infringement suits, has compelled acceptance of said licenses and effected the consequent restraint of trade and commerce between the United States and said foreign countries described above. This illegal employment of such package licenses has shielded the hundreds of pooled patents of the co-conspirators from attacks on their validity.

6. Following defendant's refusal to pay tribute to plaintiff under the illegal package license proposal and demands described in paragraph 12 of defendant's answer and after the complaint and answer in this suit had been filed, plaintiff presented to defendant for signature a form of agreement licensing defendant's manufacture and sales of television receivers of any type under a large number of patents, many undientified, at exorbitant and prohibitive and discriminatory "royalty rates" having no reference to the use, if any, of the patents covered by the proffered package license or of the value of all the individual patents in the pool. Said license, providing for total payment of "royalties" in excess of $2,500,000, was many times more onerous and discriminatory in its terms than the standard

package license first proffered before the filing of this suit, and the illegal demand was made that defendant either sign it or face protracted and expensive patent litigation on any number of hundreds of plaintiff's patents having any relation to television receivers.

7. The illegal package licenses which are the subject of counterdefendant's demands on counterclaimant include the following United States patents which counter-
1790 defendant specifically claims are infringed by television receivers manufactured and sold by counterclaimant:

Patent No.	Inventor	Issued
2,547,648	Loughren	4/3/51
2,728,813	Loughlin	12/27/55
2,773,929	Loughlin	12/11/56
2,774,072	Loughlin	12/11/56
2,848,537	Richman	8/19/58
2,905,749	Loughlin	9/22/59
2,922,839	Richman	1/26/60
2,933,558	Richman	4/19/60
2,954,425	Richman	9/27/60

Counterdefendant has further asserted that the aforesaid claims of infringement were not necessarily limited to the above-numbered patents but that hundreds of patents were at their disposal for possible assertion if the proffered package license agreement were not signed. Counterdefendant and its co-conspirators have thus employed all of the aforesaid patents and inventions in furtherance of the unlawful conspiracy described above.

8. The filing of this suit and the threats to file other infringement suits against counterclaimant on any number of patents in the Hazeltine pool were acts employed to effectuate the conspiracy alleged herein and to compel by economic coercion the signing of counterdefendant's package license. In turn either the signing of the license

or a finding of validity and infringement in this suit
1791 will signal and lend overwhelming support to attacks on counterclaimant's export trade by the foreign pools under foreign patents covering the same inventions.

9. The acts performed by counterdefenadnt and its co-conspirators pursuant to the unlawful conspiracy alleged herein were the direct and proximate cause of loss and damage to counterclaimant which injury is continuing and includes:

(A) Counterclaimant has been, and will be forced to expend large sums of money and to use the time of its officers and employees to defend against the patent infringement claims asserted;

(B) Counterclaimant has been forced by the threat of suit to expend a substantial amount of money to investigate the scope and validity of counterdefendant's patents;

(C) Because of the pendency of this suit and counterdefendant's other charges of infringement described in paragraph 7 above, counterdefendant has been forced to delay expansion of its foreign trade in England, Canada, Australia and other countries where, in furtherance of the conspiracy alleged herein, counterdefendant's inventions and patents are employed to restrain and prevent importation and trade.

Wherefore, counterclaimant prays for:

1. A judgment against counterdefendant for treble the amount of damages sustained by defendant as the proximate result of said acts of counterdefendant and its co-conspirators and for costs and attorneys' fees.

1792 2. An injunction enjoining counterdefendant and anyone in privity with it from bringing or prosecuting this or any other action at law or suit in equity charging infringement of any patents against counterclaimant, its agents, vendees, distributors or others in privity with counterclaimant and enjoining counterdefendant from continuing its said unlawful combination and conspiracy.

3. Such other and further relief as the Court may deem just.

Count II.

1. This is a counterclaim under Title 28 United States Code, Section 2201, for a declaratory judgment of invalidity, non-infringement and unenforceability of patent rights.

Counterclaimant realleges paragraphs 2 through 9 of Count I of this counterclaim as paragraphs 2 through 9 of Count II.

10. The patents asserted against counterclaimant as described in paragraph 7 are invalid as to each of their claims and said claims are not infringed by any apparatus manufactured by counterclaimant. Said patents are also unenforceable because, as set forth in paragraphs 2 through 9, counterclaimants are misusing them in violation of the public policy of the United States relating to patents and inventions and have employed and are now employing the patents and the inventions covered by said patents in violation of the Federal Anti-trust Laws.

1793 Wherefore, counterclaimant prays:

1. For a declaratory judgment of invalidity, non-infringement and non-enforceability of each of the patents listed in paragraph 7.

2. For a declaratory judgment on non-enforceability of all of counterdefendant's patents.

3. For such other and further relief as the Court may deem just.

Thomas C. McConnell,
Philip J. Curtis,
Attorneys for
Defendant-Counterclaimant
Zenith Radio Corporation.

Dated: March 21, 1963.

Of Counsel:
Dugald S. McDougall,
Francis W. Crotty.

1794 IN THE UNITED STATES DISTRICT COURT.
(Caption—59-C-1847)

AFFIDAVIT OF DAVID WESTERMANN.

State of Illinois, } ss.
County of Cook. }

David Westermann, being first duly sworn, on oath states as follows:

1. That he is President of Hazeltine Research, Inc., plaintiff and counter-defendant in the above case.

2. That the net income, after taxes, for 1964 of Hazeltine Research, Inc. was $219,777; and that its net worth as shown on its December 31, 1964 audited balance sheet, was $3,184,419.

3. That, as shown in the financial statements in its 1964 Annual Report to its shareholders, the consolidated net income of Hazeltine Corporation and its subsidiaries for 1964, after provision for Federal taxes on income, was $1,132,092, and its consolidated net worth on December 31, 1964 was $21,068,763.

David Westermann.

Subscribed and Sworn to before me this 25th day March, 1965.

Dorothy Taus,
Notary Public.

1852 UNITED STATES DISTRICT COURT.

• • (Caption—59-C-1847) • •

SPECIAL APPEARANCE FOR PURPOSES OF OPPOSING ENTRY OF JUDGMENT AGAINST HAZELTINE CORPORATION.

Comes now Hazeltine Corporation, a Delaware Corporation, by its attorneys, and appears specially for the sole purpose of opposing the entry against it of any judgment in the action entitled Hazeltine Research, Inc. *vs.* Zenith Radio Corporation, Civ. No. 59 C 1847, on the ground that the entry of any such judgment against Hazeltine Corporation would deny it due process of law under the Fifth Amendment to the Constitution of the United
1853 States, all as more fully demonstrated in the accompanying brief and affidavits.

Hazeltine Corporation,
By: John T. Chadwell,
Victor P. Kayser,
135 South La Salle Street,
Chicago, Illinois 60603,
Its Attorneys.

Of Counsel:
Chadwell, Keck, Kayser,
Ruggles & McLaren,
135 South La Salle Street,
Chicago, Illinois 60603,
RAndolph 6-2545.

1870 AFFIDAVIT OF L. B. DODDS.

State of New York, }
County of Nassau. } ss.

L. B. Dodds, being first duly sworn, deposes and says that:

1. He is Vice President of Hazeltine Corporation.

2. He has been counsel for the plaintiff in the action entitled Hazeltine Research, Inc. *vs.* Zenith Radio Corporation, Civil Action No. 59 C 1847, before the United States District Court, Northern District of Illinois, Eastern Division. Hazeltine Research, Inc. is a wholly-owned subsidiary of Hazeltine Corporation, but its business has been and is conducted wholly separate and apart from that of Hazeltine Corporation. Affiant at no time appeared in said action as counsel for Hazeltine Corporation, was never authorized to do so, and at no time held out to counsel for defendant that he was acting in the case in any capacity other than as counsel for Hazeltine Research, Inc.

3. On January 2, 1962, defendant in said action caused to be served upon E. H. McDermott, Secretary of the plaintiff, a subpoena duces tecum calling for the production, among other things, of documents relating to foreign patents of the Hazeltine Corporation.

1871 4. On January 11, 1962, plaintiff filed a motion to quash the subpoena duces tecum served on E. H. McDermott. Following the filing of defendant's memorandum in opposition to the plaintiff's motion to quash said subpoena, and of plaintiff's reply memorandum, oral argument was heard by the Court on March 6, 1962.

5. On March 6, 1962, the Court entered its order overruling plaintiff's motion to quash the subpoena duces tecum but imposed certain limitations on said subpoena.

6. On April 3, 1963, a pre-trial conference was held in

the Court's chambers at which the matter of compliance with the subpoena duces tecum came up. Although objection could have been raised, on grounds of the separate corporate entities, to the production of documents of the Hazeltine Corporation in response to a subpoena addressed to an officer of Hazeltine Research, Inc., affiant stated that in order to simplify and expedite the trial plaintiff would not rely on the fact that it is a corporate entity separate and distinct from its parent, Hazeltine Corporation.

7. Following the pre-trial conference, counsel for defendant, Dugald S. McDougall, by letter dated April 26, 1963, tendered to affiant a pre-trial stipulation. Copies of that letter and stipulation are attached hereto as Exhibit A.

1872 8. The pre-trial stipulation, incorporating various changes suggested by affiant, was subsequently signed by the parties. Such stipulation, which is dated May 7, 1963, and was signed by Mr. McDougall on May 15, 1963, reads in pertinent part as follows:

> "The parties to this Action, by their attorneys, in fulfillment of certain understandings reached orally in the course of the pre-trial conference held herein on April 3, 1963, in order to simplify and expedite trial hereby stipulate and agree, for purposes of this Action only, as follows:
>
> * * * * * *
>
> "4. Plaintiff agrees that for purposes of this litigation Plaintiff and its parent Hazeltine Corporation will be considered to be one and the same company."

9. Paragraph 4 of the pre-trial stipulation is in the identical language drafted by defendant's counsel Mr. McDougall. Affiant in executing said stipulation neither intended nor had any authority to bind Hazeltine Corporation. At no time during the trial below did counsel for the defendant express any understanding or contention that the pre-trial stipulation of May 7, 1963 was intended to be

the basis of holding Hazeltine Corporation liable on any of the issues in said action.

1873 10. That the pre-trial stipulation of May 7, 1963 was intended only for the limited purposes of simplifying and expediting trial of the action between Hazeltine Research, Inc. and Zenith, and was not intended to furnish a basis for imposing liability against Hazeltine Corporation, is confirmed by contemporaneous action of both parties.

11. On May 22, 1963, defendant filed a counterclaim in which Hazeltine Research, Inc. was the sole named counter-defendant, and the sole party from which monetary relief was requested. The prayer for monetary and injunctive relief in said counterclaim was as follows:

"1. A judgment against counterdefendant for treble the amount of damages sustained by defendant as the proximate result of said acts of counterdefendant and its co-conspirators and for costs and attorneys' fees.

"2. An injunction enjoining counterdefendant and anyone in privity with it from bringing or prosecuting this or any other action at law or suit in equity charging infringement of any patents against counterclaimant, its agents, vendees, distributors or others in privity with counterclaimant and enjoining counterdefendant from continuing its said unlawful combination and conspiracy.

"3. Such other and further relief as the Court may deem just."

1874 12. Affiant first learned that an attempt would be made to impose liability on the Hazeltine Corporation on the day following the Court's entry of findings and conclusions in said action when affiant was informed of a report by the Dow-Jones Company that defendant's counsel had stated that the judgment to be entered would run against the Hazeltine Corporation as well as Hazeltine Research, Inc.

Affiant states that he has read the foregoing; that he knows the contents thereof; and that the same is true of his own knowledge.

L. B. Dodds.

Subscribed and sworn to before me this 29th day of March, 1965.

Caroline B. Dodds,
(Seal) *Notary Public in and for the County of Nassau, State of New York.*
No. 30-6052050.
Qualified in Nassau County.

Commission Expires March 30, 1966.

1875 Exhibit A.

(Letterhead of Ooms, McDougall & Hersh, Chicago 3, Illinois.)

April 26, 1963.

Via Air Mail
Laurence B. Dodds, Esq.
5925 Little Neck Parkway
Little Neck 62, New York

Re: Hazeltine *vs.* Zenith.

Dear Larry:

I am enclosing, somewhat belatedly, the original and three copies of the stipulation which I promised to prepare and send you, following the pre-trial conference on April 3.

Copies of the stipulation are also going forward to Messrs. Curtis and Crotty, with their copies of this letter.

I am sorry it took me so long to get this ready; I have

simply been up to my ears in pressing work and have had no chance to do it sooner.

I believe you will find the stipulation in good order. If, however, you have any changes to suggest in it, please telephone me, if possible on Monday, April 29. I am requesting this prompt response only because I have to leave my office on Monday afternoon for a trial in Milwaukee and expect to be gone the rest of the week.

If you find the stipulation in good order, please execute it for Hazeltine and return the original and one copy to me. (As you will note, the stipulation has already been signed for Zenith.)

Sincerely yours,

Mac.

DSMcD:WF

Encl.

CC-Philip J. Curtis, Esq.
Francis W. Crotty, Esq.

1876 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

STIPULATION.

Whereas, defendant has moved for leave to file a counterclaim in the above-captioned action which includes a certain "Count II", seeking declaratory relief with respect to divers patents of plaintiff that have not heretofore been involved in this action, and

Whereas, the parties have agreed that it would be desirable to have the matters presently in issue resolved before the additional issues raised by said Count II are litigated, and

Whereas, the parties have further agreed that certain understandings reached orally in the course of the pretrial conference held herein on April 3, 1963, should be reduced to writing.

1877 Now, Therefore, the parties, by their respective counsel, do hereby stipulate and agree as follows:

1. Defendant agrees to withdraw said Count II from its proposed counterclaim, without prejudice.

2. Plaintiff agrees that it will not assert against defendant or its agents, distributors, or customers, by legal action or otherwise, any of its patents other than patent No. 2,547,648 already in suit, until after final disposition of the instant action.

3. Defendant agrees that, in any legal action that may hereafter be brought against it by plaintiff, charging infringement of any of the patents referred to in Paragraph 2 hereof, defendant will not rely, as a defense to such legal action, on any delay in the commencement of such action that is occasioned by plaintiff's compliance with Paragraph 2 hereof.

4. Plaintiff agrees that for purposes of this litigation plaintiff and its parent Hazeltine Corporation will be considered to be one and the same company.

1878 5. The parties agree that all documents produced by Radio Corporation of America, General Electric Company, and Western Electric Company, in the action entitled *Radio Corporation of America* v. *Rauland Corporation and Zenith Radio Corporation,* No. 48-C-1818, are authentic; and that no objection on the ground of authenticity will be made by either party to the introduction into evidence of any such documents at the trial of this action.

6. The parties agree that photocopies of all documentary exhibits may be received in evidence at the trial of this action in lieu of the original documents, without formal certification or verification; provided, however, that as to any document of which the original is in the custody of one of the parties, such original will be produced for inspection by counsel for the other party on reasonable notice, either prior to or during the trial.

Hazeltine Research, Inc.,
By .....,
Its Attorney.

Zenith Radio Corporation,
By Dugald MacDougall,
Its Attorney.

April ....., 1963.

1879 IN THE UNITED STATES DISTRICT COURT.
• • (Caption—59-C-1847) • •

PRE-TRIAL STIPULATION.

The parties to this Action, by their attorneys, in fulfillment of certain understandings reached orally in the course of the pre-trial conference held herein on April 3, 1963, in order to simplify and expedite trial hereby stipulate and agree, for purposes of this Action only, as follows:

1. Plaintiff agrees that it will not assert against Defendant or its agents, distributors, or customers, by legal action or otherwise, any of its patents other than patent No. 2,547,648 already in suit, until after final disposition of the instant Action.

2. Defendant agrees that it will not file any counterclaim herein or any separate action seeking a Declaratory Judgment of invalidity or non-infringement, or both,
1880 of any of Plaintiff's patents other than patent No. 2,547,648, until after final disposition of the instant Action.

3. Defendant agrees that, in any legal action that may hereafter be brought against it by Plaintiff, charging infringement of any of Plaintiff's patents, other than Patent No. 2,547,648, Defendant will not rely, as a defense to such legal action, on any delay in the commencement of such action that is occasioned by Plaintiff's compliance with Paragraph 1 hereof.

4. Plaintiff agrees that for purposes of this litigation Plaintiff and its parent Hazeltine Corporation will be considered to be one and the same company.

5. Any party desiring to introduce in evidence at trial a document or copy thereof previously produced by either party during discovery proceedings herein, or produced by

any party to either of certain actions entitled *Radio Corporation of America* v. *Rauland Corporation and Zenith Radio Corporation,* No. 48-C-1818, in this Court, and *Zenith Radio Corporation* v. *Radio Corporation of America,* et al., No. 1098, in the District Court of Delaware, may do so without further authentication or proof that: (a) such document is genuine, (b) such document was kept in the regular course of business, (c) such document
1881 was prepared by the author (or authors) indicated thereon on or about the date appearing on the face thereof, and (d) in the case of correspondence or memoranda, that such document was sent by the addressor(s) and received by the addressee(s) on or about the date it bears; providing that all objections under the rules of evidence are reserved, and subject to correction if error appears. Each party agrees to furnish the other party, at least thirty (30) days prior to trial, a list of such documents on which it intends to rely at the trial and the party having custody of such documents agrees to make them available to the other party for inspection.

6. The parties agree that photocopies or equivalent reproduced copies of all documentary exhibits may be received in evidence at the trial of this Action in lieu of the original documents, without formal certification or verification; provided, however, that as to any document of which the original or a master copy thereof from which the copy in question is reproduced is in the custody of one of the parties (except charts, diagrams and the like prepared for the purposes of the trial of this Action), such original or master copy will be produced for inspection by counsel for the other party on reasonable notice, either prior to or during the trial; providing that all objections under the rules of evidence are reserved.

1882 7. Uncertified printed copies or photostatic or equivalent reproduction copies of United States and

foreign patents, printed publications, and official records and publications of the U. S. Patent Office may at trial be offered in evidence by either party with the same force and effect as originals or certified copies thereof, and the dates of filing, issuance, or publication indicated thereon shall be accepted as correct, subject to correction if error should appear and providing that all objections under the rules of evidence are reserved.

8. Plaintiff is and has been since its date of issue the owner of Letters Patent No. 2,547,648, granted to A. V. Loughren on April 3, 1951, involved in this Action.

9. Solely for the purpose of establishing venue in this Action, Defendant admits that it has a regular and established place of business within the Northern District of Illinois, and that it sold or offered for sale within the Northern District of Illinois, prior to filing of the Complaint herein, television receivers identified as Model 16D21, a correct circuit diagram of which is attached hereto as Exhibit A.

10. Charges of the Court Reporters for the Official Court copy of the transcript at trial shall be paid initially one-half by Plaintiff and one-half by Defendant, and 1883 shall be taxed as costs against the losing party, or as the Court may direct. Such transcript copies as may be ordered by a party for its own use shall be paid for by such party.

11. This Stipulation and attached Exhibit may be offered in evidence in whole or in part by either party.

L. B. Dodds,
Counsel for Plaintiff.

....,
Attorney for Defendant.

Dated: May 7, 1963.

1855 IN THE UNITED STATES DISTRICT COURT.

(Caption—59-C-1847)

MEMORANDUM IN SUPPORT OF SPECIAL APPEARANCE IN OPPOSITION TO ENTRY OF JUDGMENT AGAINST HAZELTINE CORPORATION.

Hazeltine Corporation, by its attorneys, appears specially to oppose the entry of judgment against it in the above entitled proceeding. Because of representations by Zenith counsel that the judgment would bind Hazeltine Corporation, confirmed by the form of judgment tendered by Zenith, it has been deemed necessary that this unusual step be taken to insure that Hezeltine Corporation's constitutional rights be safeguarded and the company and its shareholders protected against serious and irreparable financial losses.

We call the Court's attention to the factual background here, in order that our position, and the reasons for it, be clear.

The original action was brought for infringement of a certain United States patent here owned by the plain-
1856 tiff, Hazeltine Research, Inc., a wholly-owned subsidiary of Hazeltine Corporation, on November 19, 1959. The counterclaim, alleging a violation of the Sherman Act which purported to involve foreign patents owned by Hazeltine Corporation, was filed with leave of court on May 22, 1963, more than three years after the suit was filed. Hazeltine Research, Inc. and Zenith were the only parties named in the complaint or in the counterclaim, and the only parties for whom appearances have ever been entered, until the special appearance now made. There was no attempt to serve Hazeltine Corporation with process, nor any motion to make it a party.

The counterclaim did not by its terms seek damages for any alleged act of Hazeltine Corporation. During the trial and without notice to Hazeltine Research, Inc. or Hazeltine Corporation, Zenith changed its theory and asked for damages as a direct result of alleged acts of the latter involving foreign patents not involved in the original infringement suit.*

1857 On January 25, 1965, this Court adopted as its own Zenith's proposed findings of fact and conclusions of law on the issues of the antitrust law violations and damages.

Hazeltine Corporation first learned that Zenith was asserting that it was liable on any judgment entered against Hazeltine Research, Inc. when on the day following the entry of the findings it was informed by a financial writer of the Dow Jones Company that Zenith's counsel had told Dow Jones that the judgment when entered would bind Hazeltine Corporation.

Zenith's attempt to impose judgment against Hazeltine Corporation is, we understand, based upon a pre-trial stipulation between Hazeltine Research, Inc. and Zenith.

In this memorandum we shall demonstrate that the stipulation affords no legal basis for holding Hazeltine Corporation personally liable.

---

* We call the Court's attention on this point to the Memorandum of Hazeltine Research, Inc. In Support of Its Motion for Withdrawal of Antitrust Findings and Conclusions and of Other Relief, which discusses this point in detail. While the Court has heard arguments on this question, we respectfully submit that there can be no dispute that, whichever position the Court accepts, no notice could be attributed to a non-party outside the Court's jurisdiction.

1858 I. There Is No Record Basis for Judgment Against Hazeltine Corporation.

As we have pointed out, it is our understanding that Zenith relies upon a pre-trial stipulation as its basis for judgment *in personam* against Hazeltine Corporation.

As we shall demonstrate, Hazeltine Corporation is not and was not intended to be bound by this stipulation. Thus, there is no record basis whatsoever for the action Zenith seeks.

A. The Stipulation Between Zenith and Hazeltine Research, Inc. Shows on Its Face That It Is Not Binding Upon Hazeltine Corporation.

The stipulation in question,* entered into by counsel for Zenith and Hazeltine Research, Inc., shows, on its face that Hazeltine Corporation is not bound by it.

The Stipulation, containing several paragraphs in addition to the one in dispute, all dealing with the simplification of issues, recites in its preamble (emphasis added):

> "*The parties to this Action, by their attorneys,* in fulfillment of certain understandings reached orally in the course of the pre-trial conference held herein on April 3, 1963, *in order to simplify and expedite trial* hereby stipulate and agree, *for purposes of this Action only,* as follows:"

1859 The disputed paragraph 4 states that:

> "4. *Plaintiff agrees* that for purposes of this litigation Plaintiff and its parent Hazeltine Corporation will be considered to be one and the same company."

The stipulation was executed by "L. B. Dodds, Counsel for plaintiff," and by counsel for Zenith.

Thus, the document on its face, does not bind Hazeltine Corporation, nor did anyone purport to execute it on its

*A copy of the disputed stipulation is attached hereto.

behalf. The stipulation bound only the parties in the pending case, and no one else.

B. The Surrounding Circumstances Show That the Stipulation between Hazeltine Research, Inc. and Zenith Was Not Intended to Bind Hazeltine Corporation.

1. The Stipulation Was Drafted By Counsel for Zenith So All Doubts and Ambiguities Must Be Resolved in Favor of Hazeltine Corporation.

At the outset, the Court's attention is called to the fact that the critical paragraph of the stipulation, upon which Zenith relies for an unprecedented multi-million dollar judgment against a stranger to the litigation, was drafted by Zenith's own attorneys. So also was the caption of the stipulation itself, which identified only Hazeltine Research, Inc. Thus, under fundamental principles of contract law, any doubts and ambiguities must be resolved against
1860 Zenith, whose counsel drafted the stipulation. See *Alcoa S. S. Co.* v. *United States,* 338 U. S. 421, 424-425 (1949); *Caterpillar Tractor Co.* v. *Collins Machinery Co.,* 286 F. 2d 446, 450 (9th Cir. 1960); 17 Am. Jur. 2d, Contracts § 276. There can be not dispute, of course, as to the identity of the draftsman, since, as shown by the letter fom Mr. McDougall, Zenith's attorney in the litigation, to Mr. Dodds on April 26, 1963*, forwarding the original stipulation, there was no change made in the language of the pertinent paragraph at any time after Zenith's counsel had drafted it. (Dodds, para. 7-9.)

---

* This letter is attached as an exhibit to the Dodds affidavit filed herewith.

2. Zenith's Conduct Prior to and Following the Execution of the Stipulation is Inconsistent With Any Intent That Hazeltine Corporation Be Bound in Its Absence.

Zenith's conduct throughout the proceedings is utterly inconsistent with any intent that it looked to Hazeline Corporation for damages. Zenith manifested a contrary understanding in its pleadings, in its pre-trial and post-trial briefs, and in its complete failure to take any action that would suggest that it thought Hazeltine Corporation was subject to the jurisdiction of this Court.

1861 (a) Zenith's Pleadings Are Throughout Directed Only at Hazeltine Research, Inc. and Not at Hazeltine Corporation.

Zenith's deliberate and selective references to Hazeltine Research, Inc. in its antitrust counterclaim—a counterclaim prepared *prior* to any suggestion that a pre-trial stipulation be executed, and filed without alteration in this respect *after* the pre-trial stipulation was executed—overwhelmingly refute any idea that Zenith ever looked to Hazeltine Corporation for recovery of damages in this Court until long after the trial was over. The Zenith counterclaim made no attempt whatsoever to bring Hazeltine Corporation into the case as a party litigant.

The Zenith counterclaim, in pre-stipulation form* and as filed, was captioned:

---

* Because of the need to obtain leave to file the counterclaim under Rule 15(a), Zenith had served upon Hazeltine on or about March 26, 1963, a copy of the proposed counterclaim, a proposed motion signed by counsel for Zenith, and an affidavit dated March 21, 1963 signed and sworn to by Francis W. Crotty, a vice president of Zenith and counsel in this case. Copies are attached to the affidavit of Laurence B. Dodds, previously filed with the motion of Hazeltine Research, Inc. to reopen the proceedings.

"Hazeltine Research, Inc.,
"Plaintiff-Counterdefendant,
vs.
Zenith Radio Corporation,
Defendant-Counterclaimant.
} Civil Action No. 59 C 1847"

1862 The caption did not name Hazeltine Corporation either as a counter-defendant or as a third party defendant, and Zenith never made any attempt under the Federal Rules to bring Hazeltine Corporation into the case as a third party defendant. In that portion of the counterclaim entitled "The Parties," paragraph 3 alleged:

> "3. Counterdefendant, Hazeltine Research, Inc., the party plaintiff in this suit, as an Illinois corporation owned and operated as a wholly owned subsidiary of Hazeltine Corporation, a New York corporation, engaged in the manufacture and sale of electronic equipment and devices. Counterdefendant's sole business is research in the radio and TV fields and the licensing of a patent pool in the United States pertaining to radio and television receivers and other electronic products, said pool being the United States counterpart of a number of interrelated territorial patent pools formed and operated in various market areas of the world, pursuant to a combination and conspiracy between counter-claimant, its parent, Hazeltine Corporation, and sundry other persons and corporations, domestic and foreign, as more particularly described and set forth hereinafter."

Paragraph 4 of the Counterclaim alleged:

> "Counterclaimant realleges Paragraphs 12 and 13 of its Answer herein and further asserts that conuterdefendant and its parent, Hazeltine Corporation, in furtherance of the conspiracy alleged herein has entered into illegal agreements and arrangements with large foreign companies including General Electric Co. Ltd. of England, Canadian Radio Patents Limited of Canada, Svenska Aktiebolaget Gasaccumulator of

Sweden and Neutrodyne Proprietary Ltd. of Australia wherein and whereby the inventions and patents of the parties and their co-conspirators have been pooled
1863 into mutually exclusive market areas of the world which are thereby illegally blockaded from imports of electronic devices from the United States. Counter-defendant and its parent, Hazeltine Corporation, have thereby agreed with their foreign co-conspirators not to grant licenses under their patents and inventions that would permit exports from the United States into England, Canada, Australia and other markets and said foreign co-conspirators have in turn refused to issue any licenses for importation into their mutually exclusive territories without the consent of the respective pool members. The domestic patent rights of the foreign co-conspirators are, by agreement between Hazeltine Research, Inc., Hazeltine Corporation and said co-conspirators, funneled into the Hazeltine domestic pool by assignment to counterdefendant, Hazeltine Research, Inc."

Finally, in this counterclaim, the prayer for relief asked for money damages *only against Hazeltine Research, Inc.* The Zenith prayer for relief sought (emphasis added):

"1. A judgment *against counterdefendant* for treble the amount of damages sustained by defendant *as the* proximate *result of* said *acts of counterdefendant and its co-conspirators* and for costs and attorneys' fees.

"2. An injunction *enjoining counterdefendant and anyone in privity with it* from bringing or prosecuting this or any other actions at law or suit in equity charging infringement of any patents against counterclaimant, its agents, vendees, distributors or others in privity with counterclaimant and enjoining counterdefendant from continuing its said unlawful combination and conspiracy.

"3. Such other and further relief as the Court may deem just."

1864 Nowhere in this counterclaim is there the slightest suggestion that recovery is sought against Hazeltine Corporation.

(b) Zenith Never Attempted to Bring Hazeltine Corporation Into the Case.

Further, Zenith took no procedural action that suggested it thought Hazeltine Corporation was being brought into the suit. At no time did Zenith propose to serve Hazeltine Corporation with a summons and third party complaint, pursuant to Rule 14 of the Federal Rules of Criminal Procedure, as would be required to make it a party. At no time throughout the proceeding did Zenith ever refer to Hazeltine Corporation as a party, or denominate it a party in any paper it filed with this Court. To the contrary, its pre-trial and post-trial briefs on the anti-trust issues Zenith implicitly recognized the distinction between the plaintiff, a party, and Hazeltine Corporation, a non-party. Zenith's counsel there stated: "Plaintiff is a patent holding and licensing company wholly owned by a large New York electronics company called Hazeltine Corporation." Pre-trial and Post-trial Briefs on Misuse and Antitrust Issues, p. 2. If this were in itself not a clear enough indication that Zenith understood only Hazeltine Research, Inc. to be a party, its failure to object or reply in any way to the plaintiff's description of itself in its post-trial
1865 brief makes it clear that Zenith so understood. Plaintiff countered an implication as to its size, contained in the same paragraph as the above excerpt from Zenith's briefs by pointing out:

> "Plaintiff Hazeltine is an independent legal entity which must stand on its own feet and be responsible for operations. It is not subsidized by its parent H. C."
>
> Plaintiff's Post-Trial Brief on Misuse and Antitrust Issues, p. A-1.

Zenith took no issue with this statement, for its post-trial reply brief was silent on this point.

The complete absence, throughout the entire record, of any contention, suggestion, expression of opinion, assertion or other argument, on the part of any of Zenith's trial counsel prior to filing the proposed judgment that Zenith looked to Hazeltine Corporation for recovery, or that Hazeltine Corporation was to be bound in any way by the litigation, utterly destroys any semblance of good faith that could be attributed to Zenith's belated attempt to have this Court now enter judgment against Hazeltine Corporation. Zenith's silence on this point, we suggest, speaks far more eloquently than any words that might have been used.

1866 3. Hazeltine Research, Inc.'s Conduct Prior to and Following its Execution of the Stipulation Is Inconsistent With Any Intent to Bind Hazeltine Corporation.

The conduct of Hazeltine Research, Inc., both before and after the stipulation was executed, shows clearly that there was no intent to bind Hazeltine Corporation.

Counsel appeared in the case only for Hazeltine Research, Inc. No appearance was ever entered on Hazeltine Corporation's behalf, until this special appearance. Hazeltine Corporation was not designed as a party in any of the pleadings filed by Hazeltine Research, Inc.

As this Court knows, the stipulation contributed to the elimination of procedural complexities both in the preparation for trial and the trial itself. The Dodds affidavit clearly shows that such was its purpose. In light of all these facts and circumstances, it is clear that the action Zenith seeks would, in effect, materially alter the bargain between Hazeltine Research, Inc. and Zenith, in a manner the parties themselves could not have done.

Zenith's counsel is a veteran antitrust practitioner, highly skilled in the art of litigation. It stretches credulity to believe that he, intending to bind a non-party to a judg-

ment if successful in the litigation, would hope or
1867 expect to do so with a stipulation in the form and manner adopted. Surely, he should not now be allowed to rewrite the pre-trial stipulation to bind one who was not a party to it at its inception, and who stood to benefit from it in no way whatsoever.

II. Any Judgment Against Hazeltine Corporation In This Action Would Deprive It of Due Process of Law.

Entry of an *in personam* judgment against Hazeltine Corporation in this proceeding would be contrary to basic principles of our legal system and a violation of due process of law under the Fifth Amendment to the Constitution of the United States.

The Fifth Amendment provides, of course, that no person shall be deprived of his property without due process of law. That due process means, most basically, the right and opportunity to appear and defend. The United States Supreme Court has declared:

> "It is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment in personam in a litigation in which he is not designated as a party or to which he has not been made a party by service of process. . . . A judgment rendered in such circumstances is not entitled to the full faith and credit which the Constitution and Statute of the United States . . . prescribe . . .; and judicial action enforcing it against the person or property of the
1868 absent party is not that due process which the Fifth and Fourteenth Amendments require." *Hansberry* v. *Lee*, 311 U. S. 32, 40-41 (1940).

Similarly, the Illinois Supreme Court stated, in *Alward* v. *Borah*, 381 Ill. 134, 137, 44 N. E. 2d 865, 868 (1942):

> "In the early case of *Botsford* v. *O'Conner*, 57 Ill. 72, we said: 'It is a principle that lies at the foundation of all jurisprudence in civilized countries, that a person

must have an opportunity of being heard, before a court can deprive such person of his rights. To proceed upon any other rule, would shock the sense of justice entertained by mankind, would work great wrong and injustice, and render the administration of justice a mere form. Until a person is made a party to a suit, and is afforded a reasonable opportunity of being heard in defense of his rights, a court has no power to divest him of a vested right.' So far as we know, we have never departed from this rule, but have reaffirmed it many times."

There is no precedent for entry of judgment here. We know of no case where a court, having ruled against a subsidiary corporation in a judicial proceeding, thereupon entered judgment against the non-party parent corporation solely on the basis of a stipulation to which the parent was not even a party, which did not purport to bind the parent, but on its face bound only the party signing it.

The liability asserted by Zenith was allegedly that of Hazeltine Corporation's subsidiary in its own right. 1869 Zenith made no attempt to bring Hazeltine Corporation into the litigation. Its attempt to do so would, of course, have been opposed, and, it is submitted, successfully. In any event, this issue was not raised.

For this Court to rule, upon a procedural stipulation designed solely to expedite discovery and trial, that Hazeltine Corporation, not even before the Court, should be liable for acts of a wholly-owned corporation, would be, we submit, a manifest miscarriage of justice. By so doing, this Court would exceed its jurisdiction and deprive Hazeltine Corporation of substantial constitutional rights to due process of law.

Conclusion.

We respectfully submit, that in the circumstances of this case, entry of judgment against Hazeltine Corporation would be a fundamental disregard of constitutional rights, would inflict needless and undeserved financial injury upon innocent victims that could not be remedied, and would grant to Zenith rights to which in justice it is not entitled.

Respectfully submitted,

John T. Chadwell,
Victor P. Kayser,
135 South LaSalle Street,
Chicago, Illinois 60603,
Attorneys for Hazeltine Corporation.

Of Counsel:
Chadwell, Keck, Kayser, Ruggles & McLaren,
135 South LaSalle St.,
Chicago, Ill. 60603,
Telephone: RA 6-2545.

IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Hon. Richard B. Austin, one of the judges of said court, in his courtroom in the United States Courthouse at Chicago, Illinois, on Tuesday, March 30, 1965, at the hour of 2:00 o'clock p.m.

Present:

Mr. Victor P. Kayser, Mr. Hudson Rathburn, and Mr. C. Lee Cook, Jr., on behalf of the plaintiff;

Mr. Thomas C. McConnell, Mr. Philip J. Curtis, and Mr. Francis W. Crotty, on behalf of the defendant.

Of Counsel for Defendant: Mr. Dugald S. McDougall.

2 The Clerk: 59 C 1847, Hazeltine v. Zenith, hearing.

* * * * *

Mr. Kayser: Now, I would like to inject one comment here, and that is his references always to the acts of counter-defendant and his co-conspirators; obviously what he is doing there is what he has done all the way through this case, is to say, "You have got a conspiracy and, therefore, your acts are his acts and his acts are their acts," and that is what he means when he talks about—

32 The Court: Well, certainly in regard to the American patents, there was no evidence or any charges in the pleadings in regard to a conspiracy in regard to the American patents, was there? I mean, this is strictly put on Hazeltine, on their package deal thing and Hazeltine had no co-conspirators in regard to American patents, did they?

Mr. Kayser: Well, your Honor, I agree, but Mr. McConnell said that they did.

But what is his theory here?

I mean, how could there possibly be a theory here?

Well, it is a far-out theory, but he elucidated it during the trial and pre-trial; his theory was that these acts were detrimental because if there were counter-part patents in England, or Canada, or Australia, or wherever, that if he took a license here or if the patent was found valid here that then this would somehow aid the foreign pools to enforce the counter-part patents, and that was his entire theory in this make-way antitrust counterclaim as he filed it. Maybe it doesn't make much sense, your Honor. I agree that it doesn't either. It was a make-way counterclaim.

The Court: I agree, too.

33 Mr. Kayser: It was a make way counter-claim.

But I would like to refer briefly, if I may, to these affidavits—

The Court: You may refer briefly or at length, whatever your pleasure is.

Mr. Kayser: Thank you.

The Court: I have indicated that there would be no limitation on this, because a substantial question and sum of money is involved and, therefore, there will be no limitation.

* * * * * * *

Now, we have a little bit more additional corroboration on this embargo, your Honor. We have—first, this

84 we would be prepared to prove—some more details on that. We also have a cable from the British Board of Trade, which is a branch of the English government which administered it. And for ease in reading, if your Honor desires, we have had the cable typed up because the printing is rather hard to follow. It's hard to read. As a matter of fact, I received, and haven't had a chance to digest it, a whole raft of the English statutes and regulations of the Board of Trade and so forth. But I say they

just came in, but here we have got a group of papers on this same subject. And I think it is indisputable that until June 8, 1959, the laws of the British Commonwealth or United Kingdom prevented the importing of radio and television from the United States, and yet here we have Zenith asking to hold Hazeltine for the damages on the basis of some theory that Hazeltine or these pools interfered with the development of a fully matured market. And it wasn't that at all; it was the English government.

The Court: Do you agree with the theory that sometime litigation must end?

85 Mr. Kayser: Yes, your Honor.

The Court: And these offers of proof are now being made more than one year after the proof closed on this case?

Mr. Kayser: Your Honor, this I think is one of the most unusual cases that will come into a Courtroom, in that we have here, as I think we can demonstrate—without basis we have here the danger of a judgment of almost forty-nine million dollars which will spell corporate death, which is subject to the affirmative defenses of limitations and of releases. This forty-eight million dollars is to be based on Exhibit 218 which is a group of papers, I submit, which was gotten together so hurriedly that it wasn't even typed. That, your Honor—that forty-eight million dollars, this group of papers, and I suggest that—

86 The Court: I just got through instructing a jury that in deliberating on their verdict, they should not take into consideration either sympathy or prejudice.

Mr. Kayser: Your Honor, I submit that a jury and most certainly, I respectfully say, that this court—

The Court: That rule also applies, I assume, to bench trials.

Mr. Kayser: I submit most respectfully to this court that this court should take into account equity. This is not

a matter of sympathy. This is a matter of equity and a matter of justice; that this judgment, which will spell the death of this corporation, has had absolutely no basis whatsoever. It is subject to affirmative defenses. It was accomplished by a subtle switch in theory. Maybe it should have been caught; maybe it shouldn't. But is your Honor going to penalize this corporation—

The Court: I mean, it wasn't even caught 90 days after the proofs closed.

Mr. Kayser: I agree, that's true. I agree. This is a very unusual case; we recognize that.

* * * * *

Mr. Kayser: Well, they were volunteering on everything else.

Now, I think on this subject of damage in England, I think a little piece of evidence here in this record which pretty clearly indicates just how reliable this testimony is that they put in on share of the market and damage and so forth—your Honor may recall that there was quite a bit of testimony in this case in connection with this claim of loss of profits as to the adaptability of an American television set for use in England.

97 The record will show that your Honor asked a question or two on that subject himself.

Now, Mr. Wirght, who was the lead witness on this subject, said on examination, well, there were some simple repairs and operations which a distributor could make in his backroom.

The Court: With a screwdriver.

98 Mr. Kayser: With a screwdriver. You remember it, sir.

Mr. Kaplan repeated this and Mr. McConnell quite grandly added the finishing touch when he said that all the changes that were necessary the distributor could make in his back room with a screwdriver.

* * * * *

Before Judge Austin,
Wednesday, March 31, 1965,
10:00 o'clock a.m.

Hearing resumed pursuant to adjournment.

Present. Same as before.

The Court: What is your reply to his contention
238 that the 1957 release also released Hazeltine from anything proir to the date of the release?

Mr. McConnell: Well, any money damages which had accrued prior to 1957, if they were joint tortfeasor, which we allege that they were, would be released; but we are not asking for damages prior to 19—

The Court: You have answered my question.

Mr. McConnell: But not in the future, and I have got a case squarely on that. There is no question about it at all. You cannot release torts which arise in the future. It is against public policy and it is void. Nobody has ever argued a thing like that, to my knowledge, except—

[By Mr. McConnell.] We were precluded. We are talking about something now which they keep us out of. And the same thing is true in England. They talk about tariffs, they talk about restrictions, they talk about all that. That wasn't so, as he stated this morning.

I took that evidence over there. I know what the evidence was. You could get imports into England even during currency restrictions, by government permit. You had to apply, but that doesn't mean it was an embargo. There never was an embargo—never.

And the same thing is true down in Australia. You have to apply for a permit, or did up to a certain time. But that doesn't mean that imports are precluded. And if they were, why all of this machinery to pool patents, to use them, to cut trade between countries?

I submit to your Honor that there was a fact of damage which was so clear that nobody could misunderstand it.

266 * * (Caption—59-C-1847) * *

Before Judge Austin,
Thursday, April 1, 1965,
10:00 o'clock a.m.

Hearing resumed pursuant to adjournment.

Present: Same as before.

335 [By Mr. Kayser.] Now, what Mr. McConnell is really trying to sell this court is the idea that if he can show that these pools continued after 1957 and, as he defines the pools, yes, yes, they did. There is no question about it, that these arrangements in relation to patents—that characterized necessarily as he characterizes them, but that these arrangements have continued and, so far as I know,
336 are in existence today. There is no question about that.

* * * * *

358 Now, your Honor, if I may, I would for the sake of the record like to make a couple of oral motions.

First, in view of the fact that the question has been raised as to whether or not the cause of action for damages stated in the findings was in fact disclosed and pleaded, I would like to ask leave at this time to file within a short date our affirmative defenses as a formal pleading of release and statute of limitations.

And also, your Honor, I would like again, to complete the record, to move at this time that the counterclaim as pleaded be dismissed for lack of proof, and that the counterclaim as embodied in the findings be dismissed for lack of proof and by reason of the bars of the statute of limitations and the releases.

Thank you, your Honor. I have very much appreciated your courtesy and your vast patience in listening to me. This is a matter of vital importance to the client, and if I have transgressed either on your Honor's time or in any

other respect, I am sorry. But I do appreciate very
359 much the consideration that you have given me and the client.

The Court: Mr. McConnell, do you care to address yourself very briefly on those two motions he just made? You will be limited to that.

Mr. Kayser: Sir?

The Court: Mr. McConnell—the ones that have to do with seeking to file these new pleadings on the statute of limitations.

Mr. McConnell: Well, the statute of limitations—this case is clearly distinguishable from the Emich case—

The Court: All he is doing is asking leave to file, and that is the only thing I wish to have you address yourself to.

Mr. McConnell: I think it's too late. He can make it for the record, but to actually file them in this case, the record is made. The case has been closed.

360 The Court: Well, the record will show that leave is given to file them at this time, after proofs are closed and after findings have been made.

Let me say that as far as the Court is concerned, that this has been perhaps the most gratifying two days that I have spent on the bench since I have been here. It is not often that I have before me men of the stature of those who have argued on behalf of their respective clients for the last two days.

You may say to what you have designated as the first team that had the first team been here, he could have done no better than the second team did. And I think I know enough to appraise that.

The Court at this time is prepared to enter the final judgment and decree offered with the exception of the eight numbered figure in paragraph two. The Court feels that in regard to a very limited degree, that perhaps there should be further proof solely on these two questions—the

questions of the damages in regard to Australia and the damages in regard to England.

In regard to Canada, there will be no change as far as the Court is concerned. I feel that counsel should have
361 an opportunity to offer what proof he can adduce in support of the statements made here and the offers of proof made. And it will be limited to this, let me assure you: As to whether or not radios and televisions could have been imported into England and Canada in commercial quantities prior to the start of the damage period. And in the event it is established that they could not, I would think it would require a readjustment into the percentage figure of the market.

We are not going to go into 218 and contest the figures that were offered at the time of the trial as to their authenticity or their credibility. I can see no need of any further discovery in regard to the limited proof that I will permit. I will not permit CPA's, regardless of what firm they are from, to attack the figures that have been offered other than in regard—and not perhaps even from them—as to whether in the event the cartels or pools themselves were not the proximate cause of imports into Australia and England prior to the time the damage period starts.

There could be some testimony as to whether the percentage of the market claimed under those circum-
362 stances, if that is shown to be the fact, whether the percentage figure should be as high as they are. But this is not going to be a field day for accountants going into 218 in regard to the reliability of the figures offered on the profit and loss angle. It can result only perhaps in the diminution of the percentage figure for the four-year period if Zenith was unable to, because of the law of England and Australia involving currency restriction, to sell and establish a market.

For that reason, as I say, there may be a switch in the

numbers in finding 36, the ultimate numbers. None in regard to Canada, and only to the limited extent that I have indicated from the bench today in regard to Australia and England.

Whether Mr. McConnell and his client want a partial judgment and decree in regard to all of the other aspects of the proffered final judgment and decree other than the six figure number contained therein, if he decides in the affirmative I will sign such a partial judgment and decree. But I do feel that in order to satisfy myself, in order to do equity in this matter, that I would like, to the limited extent expressed, a reopening in regard to the matters that

I have indicated that do trouble me by virtue of the 363 offers of proof that have been made and the statements

that have been made in regard solely to Australia and England.

1851 UNITED STATES DISTRICT COURT,

Northern District of Illinois,

Eastern Division.

Name of Presiding Judge, Honorable Richard B. Austin.

Cause No. 59 C 1847 Date Apr. 1, 1965

Title of Cause Hazeltine *vs.* Zenith

Brief Statement of Motion HRG

Further argts hd on motions of Hazeltine for withdrawal of fndgs of fact & concls of law on antitrust issue & misuse. Argts concluded—Oral motions of Hazeltine for lv to fl affirmative defenses and to dism counterclaim for lack of proof & lv is granted to fl said motions in writing within 5 days nunc pro tunc as of Apr. 1, 1965. Evidence is reopened for the sole & limited purpose of submitting proof of damages as to Australia & England. Cause contd to June 1, 1965 for hrg of said proof. Counsel for Zenith to prepare partial judgment order & present same Apr. 2, 1965 at 11:00 A.M.

Reserve space below for notations by minute clerk.

Enter Order.

367 • • (Caption—59-C-1847) • •

Before Judge Austin,
Friday, April 2, 1965
10:00 o'clock a.m.

Hearing resumed pursuant to adjournment.

• • • • • •

387 The Court: I am not going to put you to the point of filing counter-briefs unless you want to, or answering briefs.

Mr. McConnell: We can get the citations to your Honor on this question.

The Court: All right, call my clerk and give them to him.

388 Mr. McConnell: But I think we ought to hear from counsel. I don't want to be so presumptuous as to suggest how this matter should be handled, but he has also got this special appearance and he has also got this claim that he isn't bound by the stipulation. We are here.

The Court: I will listen to that right now so that you may have some citations in regard to that, Mr. McConnell.

Mr. Kayser: Your Honor, I would also appreciate receiving those citations promptly and I would also, if he refers to a record, I believe he did in the Milwaukee Towne case, if this is not in the court files or available, I would appreciate a chance to examine that record so that I can verify whether I agree with his construction of what Judge Barnes said in that case.

May I be accorded that courtesy?

The Court: He is instructed to advise you of whatever citations that he passes on to me.

Mr. McConnell: I would do that in any event, your Honor. I never file anything with the court without giving it to opposing counsel.

The Court: I am sure that you do.

389 Mr. Kayser: Well, you only commented you would give it to the court and I just wanted to make sure. Thank you.

Well, now, your Honor, on the matter of the objection of the parent Hazeltine Corporation to being held on the proposed judgment, I have filed—our firm has filed a special appearance for the purpose of raising that point only, and I have filed with his Honor and given copies to Mr. McConnell of the memorandum which we have filed on that point.

Now, as I understand it, Mr. McConnell's statement, his proposed judgment which would bind the parent, is based solely and entirely on a stipulation made in this case.

Now I want to say first that the first time that it was made known that Mr. McConnell regarded Hazeltine Corporation as being in fact a party to this litigation occurred when a Dow Jones release was shown to the Hazeltine Corporation people a day or two days after your Honor entered the findings and conclusions. It was then indicated that Zenith or its counsel would ask that the judgment ran against the parent as well.

390 Now, first, as concerns the subject matter of the stipulation, that is pretty much first and last and the whole thing. This stipulation, and a copy of it is attached to the memorandum, was entered into under date of May 7, 1963, at a time when, as now, the parties to the case were Hazeltine Research, Inc., plaintiff, and Zenith Radio Corporation, defendant. Those two were then, as they are now, the parties.

Now, this stipulation was stated to have been entered into pursuant to pretrial conference and in order to simplify and expedite that trial.

Paragraph 4 read that plaintiff, which is Hazeltine Research, Inc., agrees that for purposes of this litigation

plaintiff and its parent Hazeltine Corporation will be considered to be one and the same company. And who signed that stipulation? It was signed by Mr. L. D. Dodds, Counsel for Plaintiff, not counsel for plaintiff and Hazeltine Corporation, and it was signed by Mr. McDougall as well.

The Court: The basis of your argument, I assume is that a child cannot bind its parent?

391 Mr. Kayser: That is part of it, but it goes beyond that, your Honor.

We are prepared to show that neither party here, until Mr. McConnell thought of it, had any thought or intention that this stipulation would bring the parent into the case.

Now, your Honor, this stipulation was drafted by counsel for Zenith, not counsel for Hazeltine. It was drafted by Mr. McDougall, and the paragraph 4 in here is the exact language which he submitted.

392 The Court: Mr. Dodds did not have a gun to his head when he signed it, did he?

Mr. Kayser: No, he did not, your Honor.

All right. Then the question, what does the record show as to the meaning and intent of this stipulation?

Well, it shows first, your Honor, that the counterclaim which is here involved had been originally served—or, rather, notice to Hazeltine Research, Inc., back in March of 1963, or, roughly, a month or two before this stipulation was entered into.

Now, I will review the counterclaim from this point of view a moment later, but I will say in advance that no one reading that counterclaim would possibly suppose for a minute that Hazeltine Corporation was being named a counter-defendant. I will explain the very careful distinction which was made between the parent and the subsidiary in the counterclaim.

The Court: Well, of course, Hazeltine Corporation wasn't a party to the lawsuit.

Mr. Kayser: Yes, your Honor, you anticipated my
393 next point, and that is when this counterclaim was filed. It bears a date stamp of May 22, 1963. Actually, there is an indication that it may have been filed later, but there is a July date on it also. But, in any event, certainly it was filed after the stipulation.

Again, not only is the parent not named a party, but there are very clear distinctions between the parent and the subsidiary all the way through, as there were when it was originally submitted to Hazeltine Research back in March.

Now, what does this counterclaim say—and mind you, your Honor, this is post-stipulation—it names, still, Hazeltine Research, Inc., as plaintiff and counter-defendant.

Now, your Honor, we have heard at rather great length and with some repetition about the fact that Mr. McConnell has had forty years and forty very successful years at the bar.

Could anyone really believe for a minute that if he had any thought of bringing the parent into this lawsuit that he would not have named them and that he would be relying on this stipulation which was intended to simplify
394 and expedite the trial? Would any lawyer who has been practicing for two years expect to hold somebody liable on a judgment when he didn't even name them? He relied on some pretrial stipulation.

The Court: You mean that pretrial stipulations are worthless?

Mr. Kayser: No, they are not worthless, your Honor, but if Mr. McConnell ever had any thought of bringing Hazeltine Corporation into this case he would have done the obvious thing, he would have named them or he would at least have done the thing which he did in this afterthought in his findings of fact, talk about the two being treated as one. He didn't do that at all, your Honor. What

did he do? In paragraph 3 he specifically refers to counter-defendant Hazeltine Research, Inc. and says that it is a wholly-owned subsidiary of Hazeltine Corporation.

And in paragraph 4 he distinguishes again. And then, your Honor, when he comes down to the prayer for judgment for damages—thtis is on page 9 of my memorandum, and I earnestly request this court to consider that very carefully because it is very revealing. What did he pray for? First, he prayed for a judgment against counter-
395 defendant, a judgment against counter-defendant for treble the amount of damages sustained by defendant, that is Zenith, as the proximate result of said act of counter-defendant and its co-conspirators and for costs and attorneys fees.

Now, everywhere through this complaint he has indicated clearly that he considers Hazeltine Corporation a parent to be a co-conspirator. But he does not ask for any judgment for damages against the co-conspirator, he wants judgment against the counter-defendant because of the acts of counter-defendant and its co-conspirators, including Hazeltine Corporation.

And then, further, your Honor, when you go to paragraph 2, the injunctive paragraph, he talks there, more broadly, about enjoining counter-defendant and anyone in privity with it from doing the acts there alleged.

Now, there he is specifically broadening it and, of course, as your Honor knows far better than I, under injunctive provisions there are circumstances where others who have notice, act in concert and so forth, may be served with a copy of the injunction and held liable to abide by it,
396 and so he says enjoining counter-defendant and anyone in privity. But when you get to the damage paragraph above he names solely Hazeltine Research, Inc.

Now, your Honor, this thing goes beyond this. I pointed out at page 10 that in Zenith's pretrial brief and post-trial

brief they again recognize the distinction, because in both briefs Mr. McConnell, Zenith says, plaintiff, plaintiff is a patent-holding and licensing company wholly owned by a large New York electronics company called Hazeltine Corporation. If ever there was an acknowledgment, a distinction between the subsidiary on the one hand and the parent on the other, your Honor, there it is.

397 But, again, Hazeltine made its position clear in its memorandum in which it said that plaintiff Hazeltine is an independent legal entity which must stand on its own feet and be responsible for operations. It is not subsidized by its parent HC, or Hazentine Corporation.

Now, I say, your Honor, the record here is entirely clear. Now your Honor, I suppose, and properly, certainly, will ask, "Well then, what does that stipulation mean? What is the reasonable construction of it?"

Your Honor, all that stipulation can possibly be held to mean, and I submit it is clear on this record, that all that it did mean is that as concerns the parties to this litigation, the parties to this litigation, namely, Hazeltine Research, that it would agree and stipulate that the acts of its parent would be considered as its acts. This stipulation had to do with the conduct of this litigation between these parties. It had nothing whatsoever to do as concerns any litigation with any corporation which was not a party. This was

398 an agreement with Hazeltine Research made as to how it could be regarded.

Now, your Honor, there are no appearances on file by Hazeltine Corporation. Counsel for Hazeltine Research never purported to act for Hazeltine Corporation. It signed the stipulation as counsel for Hazeltine Research, Inc., and the act or the action of Zenith in now, at this late date, to try to reconstrue and rewrite the stipulation to this effect, well, frankly, it is another Park and Tilford situation where, again, at the last minute they try to bring in

Schenley and the court wouldn't do it, wouldn't permit it. But in this case he waits until the findings and conclusions are entered and then he comes up with this construction.

Now, your Honor, we have cited in our memorandum, we have cited the Supreme Court Case of. *Hansberry* v. *Lee,* and I want to read a part of the quote. It says:

"It is a principle of general application—"

The Court: Was there a stipulation in that case?

399 Mr. Kayser: Sir?

The Court: Was there a stipulation in this case?

Mr. Kayser: Not to my knowledge.

The Court: All right.

Mr. Kayser: (Reading.)

"It is a principle of general application in Anglo American jurisprudence that one is not bound by a judgment in personam in a litigation in which he is not designated as a party or to which he has not been made a party by service of process."

Now, your Honor, we submit that this is, in addition to all of the considerations, this is a question of due process as well. There is nothing in this record that could possibly justify it.

The Court: I'm glad to find out that due process applies to something besides criminal cases. That is the only time it has been raised lately.

Mr. Kayser: Well, your Honor, there is nothing in the stipulation or in this record, we submit which would justify bringing in or justify any judgments against the

400 parent corporation.

1884 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—59-C-1847) * *

MOTION OF HAZELTINE RESEARCH, INC. FOR DISMISSAL OF COUNTERCLAIM.

Pursuant to leave of Court on April 1, 1965, Hazeltine Research, Inc. has filed the defenses of Statute of Limitations and Release, nunc pro tunc as of April 1, 1965.

Hazeltine Research, Inc. renews its motion to dismiss Zenith's counterclaim on the ground that the allegations of the counterclaim have not been proved, and on the further separate and additional grounds that the claim for damages (1) is barred by the Statute of Limitations and (2) is barred and discharged by the Releases referred to in said affirmative defenses.

1885 Counsel assumes that there is no need to repeat the offer of proof of Hazeltine Research, Inc. as to these Releases, but to avoid any doubt, hereby renews said offer.

Hazeltine Research, Inc.,
By: Victor P. Kayser,
135 South LaSalle Street,
Chicago, Illinois 60603,
Attorney for Hazeltine Research, Inc.

Of Counsel:
Chadwell, Keck, Kayser,
Ruggles & McLaren,
135 South La Salle Street,
Chicago, Illinois,
Telephone: RA 6-2545.

1886 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

DEFENSES OF HAZELTINE RESEARCH, INC.

Hazeltine Research, Inc., plaintiff and counterdefendant herein ("Hazeltine"), pursuant to leave granted by District Judge Richard B. Austin, United States District Judge, on April 1, 1965, on motion of counsel for Hazeltine Research, Inc., hereby files nunc pro tunc as of April 1, 1965, the following defenses:

First Defense.

All claims for damages alleged by Zenith Radio Corporation ("Zenith") in its counterclaim, or which were claimed by Zenith during the trial, or which were asserted in the Findings of Fact and Conclusions of Law proposed by Zenith and adopted by the Court on January 25, 1965, which accrued more than four years prior to the filing of the counterclaim, or which assert damages on the basis of or as a consequence of any act or acts occurring more than four years prior to the filing of the counterclaim, are
1887 barred by the provisions of Section 4B of the Clayton Act, 69 Stat. 287 (1955) 15 U. S. C. § 15b.

Second Defense.

All claims for damages alleged by Zenith in its counterclaim, or which were claimed by Zenith during the trial, or which were asserted in the Findings of Fact and Conclusions of Law proposed by Zenith and adopted by the Court on January 25, 1965, are barred, released and discharged to the extent that they are based on or are consequences of any act or acts done on or before September

27, 1957 (or whatever later date any of the releases hereinafter referred to were executed), by the general releases given by Zenith to Radio Corporation of America, General Electric Company and Western Electric Company, or to one or more of them, on or about September 27, 1957, said releases being in the form attached hereto as Exhibit A, or in similar form, and releasing all claims, causes of action, etc., which Zenith had had, then had or might have in the future for, upon or by reason of any matter, cause or thing from the beginning of the world to the date of the releases.

Said releases were given by Zenith and its subsidiary, The Rauland Corporation, in connection with the settlement of the litigation, then pending entitled Radio Corporation of America v. Zenith Radio Corporation and the Rauland Corporation, Civil Action 48 C 1818 in the United States District Court, Northern District of Illinois, Eastern Division, in which Zenith and Rauland had filed 1888 counterclaims against Radio Corporation of America, General Electric Company and Western Electric Company.

Since in this litigation, Zenith has taken the position that Hazeltine, and its parent Hazeltine Corporation, were co-conspirators with Radio Corporation of America, General Electric Company and Western Electric Company, in the alleged wrongful activities charged by Zenith and Rauland in their counterclaim in said litigation (C. A. 48 C 1818), said releases bar all damage claims herein to the extent that they are based on alleged acts occurring on or prior to September 27, 1957, or any later date on which any of said releases may have been executed.

By filing these defenses, it is not admitted or agreed

that the counterclaim as filed by Zenith in this case, alleged as acts constituting the direct and proximate cause of loss and damage, any acts occurring more than four years prior to the filing of said counterclaim.

Hazeltine Research, Inc.
By Victor P. Kayser,
Attorney for Hazeltine Research, Inc., Plaintiff-Counterdefendant.

Of Counsel:
Chadwell, Keck, Kayser,
Ruggles & McLaren,
135 South LaSalle Street,
Chicago, Illinois 60603.
Mason, Kolehmainen, Rathburn & Wyss,
20 North Wacker Drive,
Chicago, Illinois 60606.

1889 Exhibit A.

To All To Whom These Presents Shall Come Or May Concern, Greetings: Know ye, That Zenith Radio Corporation and the Rauland Corporation, each a corporation organized and existing under and by virtue of the laws of the State of Illinois, for and in consideration of the sum of One Dollar ($1.00) lawful money of the United States of America and other good and valuable consideration, to them in hand paid by*....., the receipt whereof is hereby acknowledged, have each remised, released and forever discharged, and by these presents does each for itself and its respective subsidiaries, successors and assigns remise, release and forever discharge the said*.....and its subsidiaries and their respective successors and assigns of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds,

bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty, or in equity, which against said* ....., its subsidiaries and their respective successors and assigns, said Zenith Radio Corporation and The Rauland Corporation and each of them ever had, now has or which each of them and their respective subsidiaries, successors and assigns, hereafter can, shall or may have for, upon or by reason of any matter, cause
1890 or thing whatsoever from the beginning of the world to the day of the date of these presents, not including however, claims, if any, for unpaid balances on any goods sold and delivered.

This release may not be changed orally.

In Witness Whereof the said Zenith Radio Corporation and The Rauland Corporation have each caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer on the ..... day of September, nineteen hundred and fifty-seven.

In the Presence of: Zenith Radio Corporation.

..... By .....

In the Presence of: Zenith Radio Corporation.

..... By .....

---

* Insert
"Radio Corporation of America," or
"General Electric Company," or
"Western Electric Company."

State of Illinois, }
County of Cook. } ss.

On the ..... day of September, nineteen hundred and fifty-seven, before me came ..... to me known, who, being by me duly sworn, did depose and say that he resides at ....., that he is ..... of Zenith Radio Corporation, the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

.....,
Notary Public.

1891

State of Illinois, }
County of Cook. } ss.

On the ..... day of September, nineteen hundred and fifty-seven, before me came .....; to me known, who, being by me duly sworn, did depose and say that he resides at ....., that he is ..... of the Rauland Corporation, the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

.....,
Notary Public.

1892 IN THE UNITED STATES DISTRICT COURT.

(Caption—59-C-1847)

MEMORANDUM OF PLAINTIFF HAZELTINE RESEARCH, INC. CONCERNING FORM OF PROPOSED FINAL JUDGMENT AND DECREE SUBMITTED BY DEFENDANT ZENITH RADIO CORPORATION UNDER DATE OF APRIL 1, 1965.

As counsel for Hazeltine Research, Inc. ("Hazeltine") we received a copy of Zenith's new form of proposed "Final Judgment and Decree" late on the afternoon of April 1, 1965. We have today filed separate memorandum opposing the entry of a final judgment at this time on the ground that this Court has no power to do so because the counterclaim involves a single claim which cannot be so fragmented.

However, pursuant to our statement in Court yesterday, we are herein outlining the objections of Hazeltine to the injunctive paragraphs of the proposed "Final Judgment and Decree". It should be understood, of course, that by making these specific objections and suggesting alternate or additional language Hazeltine does not consent to the entry of the judgment or decree, or waive its right to question the entry of any judgment or decree

1893 against it, and does not waive its right on appeal or otherwise to object to or raise any error with respect to the entry of any such judgment or decree. In this memorandum, we address ourselves solely to the question of whether the proposed judgment is in conformity with the findings of fact and conclusions of law entered by this court and whether it meets the requirements of Rule 65(d) of the Federal Rules of Civil Procedure.

I. The Inclusion of Hazeltine's Parent, Hazeltine Corporation, in the Judgment Form.

Zenith proposes that the judgment be entered against Hazeltine's parent, Hazeltine Corporation, despite the fact that Hazeltine Corporation has never been a party to this litigation. However, that issue will be discussed in a separate brief filed on behalf of Hazeltine Corporation, and will not be discussed in this memorandum.

II. The Proposed Injunctive Provisions.

Before discussing the specific injunctive provisions which are labeled as paragraphs A, B and C of the Decree, we believe it is appropriate to first point out some of the general principles which govern the form and language of an injunction.

1894 The statutory requirements regarding the form and language of an injunction are set forth in Rule 65(d) of the Federal Rules of Civil Procedure. This rule, in part, provides that:

> "*Every order granting an injunction* . . . shall set forth the reasons for its issuance; shall be *specific in terms;* shall describe in *reasonable detail,* and not by reference to the complaint or other document, *the act or acts sought to be restrained.*" (Emphasis added.)

Because a party who violates an injunction is subject to contempt proceedings, the courts have uniformly held that the terms of an injunction must be specific so that the party enjoined will know precisely what is proscribed by it. Obviously the purpose of such a rule is to avoid guesswork and the necessity for obtaining later constructions by the court. In *Schine Theatres v. United States,* 334 U. S. 110 (1948), the defendants were enjoined against "monopolizing" first and second run films. The

Supreme Court held that "monopolizing" was not sufficiently specific and noted "the public interest requires a more specific decree . . ." 334 U. S. 110 at p. 126. See also *Hartford-Empire Co.* v. *U. S.*, 323 U. S. 386 (1945); *Farrell* v. *Danielson*, 296 F. 2d 39 (9th Cir. 1961); *Brumby Metals, Inc.* v. *Bargen*, 275 F. 2d 46 (7th Cir. 1961); *Schwegmann Bros. G. S. Mkts.* v. *Hoffman-LaRoche, Inc.*, 221 F. 2d 326 (5th Cir. 1955), *cert. denied*, 350 U. S. 839 (1955).

1895 The act or acts which are enjoined must be coextensive with those which were found to have been unlawful. Only "the precise practices found to have violated the act should be specifically enjoined." *Schine Theatres* v. *U. S.*, 334 U. S. 110, 126 (1948). The decree must be addressed only to those practices "indulged in or threatened" by the party who is enjoined, *Hartford-Empire Co.* v. *U. S.*, 323 U. S. 386, 418 (1945), and it must not be "so vague as to put the whole conduct of the defendant's business at the peril of a summons for contempt." *Swift & Co.* v. *United States*, 196 U. S. 375, 396 (1905). It must not prohibit a party from doing lawful acts "which are usual and necessary" in the operation of his business. *Corica* v. *Rogers*, 140 F. 2d 496 (7th Cir. 1944). Finally, the decree cannot enjoin "all possible breaches of the law." *Labor Board* v. *Express Publishing Co.*, 312 U. S. 426 (1941); *National Labor Relations Board* v. *Kinner Motors*, 152 F. 2d 816 (8th Cir. 1946) and *Bowles* v. *Montgomery Ward & Co.*, 143 F. 2d 38 (7th Cir. 1944).

With this general statement of rules and principles applicable to injunctions, we now turn to a discussion of the specific paragraphs of the proposed decree.

Paragraph A. This paragraph is unduly broad because it is not limited to domestic patents for use in the manufacture of radio or television receivers. As written,
1896 this paragraph would cover "any" domestic pat-

ents. However, the findings and conclusions entered by the court, as well as all of the evidence in this case, dealt with patents in the field of television and radio. The injunctive provision, therefore, should be no broader.

Exhibit 1 attached hereto contains a re-draft of paragraph A of the decree which is properly limited to domestic patents involving television and radio.

Paragraph B. This paragraph is seriously defective in a number of respects. First, like paragraph A, it refers to "any" domestic patents and is not, as it should be, limited to domestic patents in the television and radio field. Secondly, its provisions are very vague and uncertain and it is impossible to determine from the language just what is forbidden and what is not forbidden. In fact, the paragrapth as written is subject to a number of possible constructions entirely outside the scope of the litigation and findings and conclusions. Accordingly, we have set forth in Exhibit 1 attached hereto, a proposed new paragraph B which is consistent with the findings and conclusions entered in this case, and which, we believe, clearly states the full extent of the relief which Zenith could expect under such findings.

As far as is possible, we have left intact the language of Zenith and have added provisions which are in-
1897 tended to eliminate any ambiguity. However, in some instances, the only way the error could be corrected or the ambiguity resolved is by changing the language in the proposed judgment and decree submitted by Zenith.

The re-draft of paragraph B is intended to accomplish three main things:

(1) As drafted, paragraph B is not limited to license offers currently being made, but gives Zenith the benefit of any past royalty rate whether or not any longer in effect or lower than the rate currently being offered to others. In other words, Zenith's proposal could in-

volve discrimination in Zenith's favor over other licensees. The modification we propose would provide that Hazeltine could not condition the grant of a license to Zenith under a domestic patent upon payment of the same or greater royalty rate than the rate at which licenses are then being offered to others under a group of domestic patents which includes said patent.

(2) The first proviso is intended to eliminate any doubt that the rates for each of the patents if taken separately need not add up exactly to the rate for the group, so long as the price for an individual patent is not so disproportionate to the royalty for the group as to amount to a refusal to license less than the complete package.

1898 (3) The second proviso is intended to make it clear that the injunction does not require that beneficial royalty rates be given to Zenith for longer periods than they are available to others.

Paragraph C. Paragraph C, which deals with foreign patents, is also objectionable on at least two basic grounds. First, it is much broader than the issues in the case in that it refers to "electronic apparatus" generally and not specifically radio and television which were the only products involved in this case, and it broadly refers to "any foreign market" instead of Canada, England and Australia which are the only foreign markets involved here. Appropriate changes have been incorporated in the re-draft attached hereto.

Secondly, the meaning and effect of this provision is unclear and it could be construed in a way to bar activities which are outside the scope of the findings and conclusions and which are clearly lawful. To clarify this provision and to eliminate any ambiguity we have added a proviso, which is incorporated in Exhibit 1 attached hereto. The purpose of this proviso is to make it clear that the injunction does not prohibit all foreign licensing or as-

signments or the charging of a royalty on imports
1899 so long as there is no discrimination against importers, i.e., so long as they are offered the same terms as are available to those who manufacture in the country involved.

Respectfully submitted,

Hazeltine Research, Inc.,
By Victor P. Kayser,
One of Its Attorneys.

Of Counsel:

Laurence B. Dodds,
59-25 Little Neck Parkway,
Little Neck, New York,

Chadwell, Keck, Kayser,
Ruggles & McLaren,
135 South La Salle Street,
Chicago, Illinois 60603,

Mason, Kolehmainen, Rathburn & Wyss,
20 North Wacker Drive,
Chicago, Illinois 60603.

1900 Exhibit 1.

It Is Herewith Decreed that Hazeltine Research, Inc. and its officers, agents, servants, employees and attorneys shall be and hereby are enjoined and restrained from:

A. Conditioning, directly or indirectly, the grant of licenses to defendant-counterclaimant, Zenith Radio Corporation, or any of its subsidiaries, under any domestic patent for use in the manufacture of television or radio sets, upon the taking of a license under any other patent or upon the payment of royalties on the manufacture, use or sale of apparatus not covered by such patent.

B. Conditioning, directly or indirectly, the grant of any license or defendant-counterclaimant, Zenith Radio Corporation, or any of its subsidiaries, under any domestic patent for use in the manufacture of television or radio sets, upon the same or greater royalty rate than the rate at which licenses are then being offered to others under a group of domestic patents which includes said patent.

Provided that this paragraph shall not be construed to prevent the offer of a license for such group of patents at a royalty which is less than the total of the royalties at which the patents are offered for licensing individu-
1901 ally, so long as the price for the individual patent is not so disproportionate to the royalty for the group of patents as to amount to a refusal to license less than the complete package;

Provided, further, that the royalty rates available to Zenith for single patents, or for a group of patents including such individual patent, need not be available to Zenith or its subsidiaries, for longer periods of time than such royalty rates are available to others.

C. Entering into, adhering to, enforcing or claiming any rights under any contract, agreement, understanding, plan or program, with any other person, company, patent pool, organization, association, corporation or equity, which directly or indirectly restricts or prevents defendant-counterclaimant, Zenith Radio Corporation, or any of its subsidiaries, from exporting any radio or television sets from the United States into any foreign market;

Provided, however, that the provisions of this subparagraph C shall not be construed to prohibit the outright sale or assignment of patents, nor to prohibit patent license agreements so long as the licensee shall have agreed with respect to said licensed patents that if it sublicenses the same to third parties for use in the manufacture of television or radio sets, it will make sublicenses under
1902 said patents available as to the imports of apparatus from the United States on terms and conditions no less favorable than the terms and conditions available as to television or radio sets manufactured within the country.

1920 UNITED STATES DISTRICT COURT.

Northern District of Illinois.

Eastern Division.

Name of Presiding Judge, Honorable Richard B. Austin.

Cause No. 59 C 1847 Date Apr. 2, 1965

Title of Cause
Hazeltine Research vs. Zenith Radio.

Brief Statement of Motion
Motion to Enter Partial Judg. for Counterpltff.

Reserve space below for notations by minute clerk.

Argts hd on objs to proposed order of Zenith for judg and argts hd with respect to certain stipulation and advisement. Cause contd to Apr. 5, 1965 at 10:15 A.M. for ruling. Motion of Hazeltine to dism counterclaim is denied.

319 IN THE UNITED STATES DISTRICT COURT.
(Caption—59-C-1847)

MOTION TO QUASH SUBPOENA DUCES TECUM.

Now Comes Plaintiff, Hazeltine Research, Inc., by its attorneys, and moves that a certain Subpoena Duces Tecum served by Defendant on January 2, 1962, on Edward H. McDermott, Secretary of Hazeltine Research, Inc., be quashed on each of the following grounds:

1. Defendant is not entitled to make discovery of documents in the possession of Plaintiff without a showing of good cause as required by Rule 34 of the Federal Rules of Civil Procedure.

2. The Subpoena Duces Tecum is so broad and far ranging, both in time and in scope, as to be unreasonable and oppressive and not calculated to serve any justiciable purpose.

320 3. The documents sought by the Subpoena are germane only to affirmative defenses raised by paragraphs 12 and 13 of Defendant's Answer herein, which are shown by Defendant's Answers to Plaintiff's Interrogatories to be a sham and not bona fide defenses.

A Memorandum and an Affidavit of L. B. Dodds, counsel for Plaintiff, in support of the foregoing Motion are attached hereto.

Mason, Kolehmainen,
Rathburn & Wyss,
M. Hudson Rathburn,
20 North Wacker Drive,
Chicago 6, Illinois,
Attorneys for Plaintiff.

Of Counsel:
M. Hudson Rathburn,
20 North Wacker Drive,
Chicago 6, Illinois.

L. B. Dodds,
E. A. Ruestow,
59-25 Little Neck Parkway,
Little Neck 62, New York.

Service and receipt of a copy of the foregoing Motion to Quash Subpoena Duces Tecum, Affidavit and Memorandum are acknowledged this 11th day of January, 1962.

Philip J. Curtis (per P.S.),
Attorney for Defendant.

324 Exhibit A.

Subpoena Duces Tecum.
Deputy U. S. Marshal M. Fischer.

Case No. 59 C 1847.

Served at 3:45 p.m.
1/2/62
A. A. S.

UNITED STATES DISTRICT COURT.

Northern District of Illinois.

The President of the United States of America.

To Hazeltine Research, Inc., By its Secretary,
5445 W. Diversey Avenue,
Chicago, Illinois.

—Greeting:

We Command You, that all business and excuses being laid aside, you and each of you attend at the offices of McConnell, Paschen & Curtis, 134 S. LaSalle Street, Chicago 3, Illinois, on the 19th day of January, A. D. 1962, at 10:00 o'clock in the forenoon in Room 1110 of said offices to testify and give evidence in a certain cause now pending and undetermined in said Court, wherein Hazeltine Research, Inc. is plaintiff and Zenith Radio Corporation is Defendant, on the part of said Zenith Radio Corporation. And that you also diligently and carefully search for, examine, and inquire after and bring with you, and produce at the time and place aforesaid, the documents described in the schedule attached hereto and made a part hereof which are in the possession, custody or control of Hazeltine Research,

Inc., or any of its subsidiaries or controlled companies, or the officers, directors, agents, representatives, employees or counsel of any of them, together with all copies, drafts, and vouchers relating to the said documents, and all other documents, letters, and paper writings whatsoever, that can or may afford any information or evidence in said cause. And this you shall in nowise omit, under the penalty of the law in that case made and provided.

To the Marshal of the Northern District of Illinois to execute and return in due form of law.

Roy H. Johnson,
Clerk,

[Seal]

By .....
Deputy Clerk.

Dated: December 19, 1961.

325 Definitions.

The term "documents" includes all writings, and/or records of any kind, including, but not limited to, the originals and all copies and drafts of contracts, agreements, and amendments thereto, correspondence, cablegrams, radiograms, telegrams, memoranda, reports, recordings and other transcription of telephone and/or other conversations, conferences and/or meetings, affidavits, books of account, transcripts of testimony in judicial or administrative proceedings, minutes of meetings, including directors' meetings and committee meetings, diaries, intra-office communications, logs, advertisements, scrap-books, press and publicity releases, reports to stockholders and/or to governmental bodies, records, reports and/or summaries of negotiations and all other writings of every kind, including documents passing from or to or between Hazeltine

Corporation and Hazeltine Research, Inc. or their domestic or foreign subsidiaries or affiliated or controlled companies, or the officers, or representatives of any of them, and any documents passing from or to or between said companies and foreign companies, or the officers, directors, agents, representatives, employees or counsel of any of them.

The term "Hazeltine" as used herein includes Hazeltine Corporation, Hazeltine Research, Inc. and any and all domestic or foreign subsidiaries and/or affiliated companies under the control of Hazeltine Corporation or Hazeltine Research, Inc.

The term "patent" as used herein means any patent usable in the manufacture or sale of radio and television apparatus or any constituent part thereof.

Subpoena Duces Tecum.

1. All documents referring or relating to foreign patents or foreign patent licenses or rights of any kind covering any invention which is the subject of any United States patent licensed under the standard license agreements issued or proffered by Hazeltine to any licensee or prospective licensee in the United States at any time during the life of the patent in suit.

2. All communications between Hazeltine and any company of person having licensing rights under foreign patents of Hazeltine, referring to or relating to the actual or proposed licensing of any foreign patent on inventions which are the subject of any United States patent licensed under any Hazeltine standard license agreement issued or proffered in the United States at any time during the life of the patent in suit.

3. All documents referring or relating to the following foreign patent licensing organizations and/or any of their patent pooling and/or licensing activities:

326 Canadian Radio Patents Ltd.

Australian Radio Technical Services and Patents Co., Ltd.

British radio and television patent pool*

Telefunken G. M. B. H.

N. V. Philips Gloeilampheñ fabriekeñ

Any other foreign patent pool or company or organization having licensing rights under any of the patents of Hazeltine and any other patentee

and all communications between Hazeltine and/or any of its officers, agents, representatives or counsel and any of said foreign patent licensing organizations, and/or any of the officers, agents, representatives or counsel of any of said organizations.

4. All documents concerning the creation, administration, operation, purpose and/or policies of any and all patent pools or licensing organizations having rights in respect of patents of Hazeltine or foreign patents covering inventions of Hazeltine, including without limiting the generality of the foregoing, Canadian Radio Patents Ltd., Australian Radio Technical Services and Patents Co., Ltd., the British radio and television patent pool,* Telefunken G. M. B. H. and N. V. Philips Gloeilamphenfabrieken.

5. All documents referring or relating to the issuance or denial of any license to import or export under any foreign patent of Hazeltine.

6. All documents relating to the assertion against Zenith Radio Corporation or others engaged in the manufacture or sale of radio and/or television apparatus, and/or constituent parts thereof, in the United States of America, Canada and/or any other country of any foreign or do-

* Referred to in note number 2 to plaintiff's answer to defendant's interrogatory 14.

mestic patents or patent rights owned or licensed by Hazeltine.

7. All documents relating or referring to policies and/or practices of Hazeltine and/or of any person having a right to extend licenses under any patent rights of Hazeltine in the United States of America and/or any foreign country in respect of any actual and/or proposed license of the export and/or import of radio and/or television apparatus and/or constituent parts thereof.

8. All documents relating or referring to any request or inquiry, by any person or company manufacturing and/or selling radio and/or television apparatus, for a license
327 under some but less than all of the patent rights owned by Hazeltine or in which Hazeltine has, or at any time during the life of the patent in suit has had, a beneficial interest.

9. All documents relating or referring to package licensing of Hazeltine patent rights.

896 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

ZENITH'S PRE-TRIAL BRIEF ON THE ANTITRUST ISSUES RAISED IN THE ANSWER AND COUNTERCLAIM.

Preliminary Statement.

The court has set for separate trial the antitrust issues raised in the answer to this patent infringement case and in the counterclaim for damages and injunctive relief. For the court's convenience, the pertinent paragraph of the answer (Paragraph 12) is set forth in Appendix I hereto which relates to plaintiff's illegal international activities, this paragraph is included in Appendix I because the

counterclaim by reference incorporates its allegations. For convenience, the counterclaim is set forth in Appendix II of this brief.

897

I.

The Misuse Defense Interposed by Zenith in the Instant Suit.

(a) The Factual Bankground of the Defense.

Plaintiff is a patent holding and licensing company, wholly owned by a large New York electronics manufacturing company called Hazeltine Corporation. The gross income of the Hazeltine enterprises approximates $47,000,000 per year. It is not, as plaintiff's counsel describes it, a "minuscule" operation.

(b) Background of the International Conspiracy Alleged in the Counterclaim.

The international conspiracy alleged in the counterclaim is one of the most notorious in the history of illegal cartels. It has been before the federal courts in various antitrust proceedings on a number of occasions and has been the subject of five consent decrees in Government civil suits,* one involving an effective dedication of R. C. A. patents 926 for radio and black and white television receivers. In a criminal action against R. C. A. in which a plea of *nolo contendere* was entered, a fine of $100,000 was imposed, 1958 Trade Cases, par. 69,116. Hazeltine was specifically named as a con-conspirator in the four most recent Government civil proceedings as well as in the criminal indictment of

* *United States of America* v. *General Electric Company, Westinghouse Electric Corporation, N. V. Philips' Gloeilampenfabricken,* 1962 Trade cases, par. 70546, 70428, and 70342; *United States of America* v. *Radio Corporation of America,* 1955 Trade Cases, par. 67945; *United States of America* v. *R. C. A. et al.* (DC Del. 1932), No. 793 In Equity.

R. C. A. The same conspiracy was the subject of a private treble damage action in this court brought in the form of a counterclaim filed by Zenith in a patent infringement action, similar to this suit. *R. C. A.* v. *Zenith and Rauland Corporation,* 48 C 1818. During the course of bitterly fought pretrial proceedings in that action seven judicial opinions were handed down.** After the evidence had been adduced in difficult and protracted discovery proceedings, on September 27, 1957, R. C. A., G. E. and Western Electric agreed to pay Zenith $10,000,000 in damages and to issue to it world-wide royalty free patent licenses for a period of six years in settlement of the litigation.

Pursuant to government decrees RCA, G. E., Westinghouse and Philips have been ordered out of the conspiracy and Hazeltine now enjoys the unique distinction of being the only known remaining American conspirator in this illegal international patent cartel system. Mr. Dodds, plaintiff's attorney and a director and officer of Hazeltine Corporation, stated under oath at his deposition in this case that he intends to keep his company in the patent pools which, as will be shown below, are the traditional instrumentalities employed by the conspirators to divide territories and restrain foreign and domestic commerce in the sale of radio and television products throughout the world.

While the cartel arrangements have a long and com-
927 plex history, and for years have been world wide in scope, Zenith proposes merely to show their operations in England, Canada and Australia, where its trade has been primarily restrained during the four-year statutory damage period,* and to seek appropriate injunctive relief prohibiting all such future illegal restraints on its foreign and domestic commerce by Hazeltine.

** 18 F. R. D. 440; 1956 Trade Cases pars, 68,306, 68,475, 68,490; 1957 Trade Cases, pars. 68-712, 68,744; 217 F. 2d 218, cert. den. 348 U. S. 973.

* 15 USC § 15(b).

1151 IN THE UNITED STATES DISTRICT COURT.
* * * (Caption—59-C-1847) * *

DEFENDANT'S POST-TRIAL BRIEF ON THE ANTITRUST ISSUES RAISED IN THE ANSWER AND COUNTERCLAIM.

(Filed April 15, 1964.)

Preliminary Statement.

The evidence adduced at the separte trial of the antitrust issues raised in the answer and counterclaim to this patent infringement suit concerns two separate but related aspects of Hazeltine's illegal activities:

1. The misuse of its domestic patents as alleged in Paragraph 12 of the answer, and

2. Hazeltine's conpiratorial arrangements with members of patent pools in Canada, England and Australia, where, by combination between Hazeltine and large foreign manufacturers, exports of electronic apparatus from the United States into those markets have been illegally restrained and Zenith's foreign commerce effectively curtailed*

I.

The Misuse Defense Interposed by Zenith in the Instant Suit.

(a) The Factual Background of the Defense.

Plaintiff is a patent holding and licensing company, wholly owned by a large New York electronics manufacturing company called Hazeltine Corporation. The

* For convenient reference the relevant pleadings are set forth in Appendix I and II of Zenith's Pre-Trial Brief.

gross income of the Hazeltine enterprises approximates $47,000,00 per year. It is not, as plaintiff's counsel describes it, a "minuscule" operation (Def. Exh. 1).

Pursuant to Government decrees R. C. A., G. E., Westinghouse and Philips were ordered out of the conspiracy—as the decrees plainly show—and Hazeltine now enjoys the unique distinction of being the only known remaining
1194 American conspirator in this illegal international patent cartel system. Mr. Dodds, plaintiff's attorney and a director and officer of Hazeltine Corporation, stated under oath at his deposition in this case (R. 137) that he intends to keep his company in the patent pools which, as will be shown, are the traditional instrumentalities employed by the conspirators to divide territories and restrain foreign and domestic commerce in the sale of radio and television products throughout the world.

While the cartel arrangements have a long and complex history, and for years have been world wide in scope, Zenith limited its proofs to their operations in England, Canada and Australia, where its trade has been flagrantly restrained during the four-year statutory damage period.*

---

* 15 USC § 15(b).

EDWARD A. RUESTOW, called as an adverse witness at the instance of the defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McDougall.

Q. Mr. Ruestow, will you state for the record your full name in the form in which you normally use it in business and advise us as to your residence.

A. Edward A. Ruestow, R-u-e-s-t-o-w, Valley Road, R. D. 1, Glenhead, New York.

* * * * *

919 By Mr. McDougall.

Q. Mr. Ruestow, are you an officer of any of the 920 Hazeltine complex of corporations and, if so, please identify which corporations and in each instance what your title is.

A. I am executive vice president of Hazeltine Research, Inc., the plaintiff in this case. I am also a director. At the moment I have no other offices in the Hazeltine complex.

Q. Does general supervision of the granting of licenses fall within the compass of your normal duties as an officer of the plaintiff?

A. Yes.

921 Q. Name for us, please, the manufacturers of television receivers in the United States today which have a license from the plaintiff under the patent in suit, and for the time being limit your answer to those companies which have a license under the patent in suit and do not have, as part of the same contract, license rights under the Hazeltine package of patents or other patents than the one involved here.

A. There is—let me think.

The Court: Do you have some data here that will help you with this question?

The Witness: I don't have it on hand, your Honor. I must think from memory, and I may make some omissions.

By Mr. McDougall:

Q. Well, we had some notes made that we took at the time of the testimony of your first witness?

A. Yes.

Q. And there is a possibility that we can help you by filling in.

Go ahead.

A. Yes. We are talking only about the Loughren
922 patent—Warwick, Westinghouse, Wells-Gardner, Curtis Mathes, Sylvania—

Q. Excuse me, is Sylvania—

A. No, that is a mistake. That includes something more than the Loughren patent.

I don't recall the others at the moment, but I know you have a list there.

Q. Well, you have called off all of the names that were on my previous list except a company that—this may just be my inability to read someone's handwriting, but it looks like Conrad, C-o-n-r-a-d.

A. Conrac.

Q. Will you spell that for us?

A. C-o-n-r-a-c. It is the Conrac Division of the Giannini Controls Corporation.

Q. Is this company a manufacturer of television receivers?

A. They have been, and I am a bit uncertain as to what they are doing now. I think they may have discontinued.

Q. Now, in addition to this group of companies, I understand there is an additional company or two that has a license under the patent in suit as a part of a more all-
923 embracing grant of license rights.

A. That is correct.

Q. Will you name all companies that fall in that category?

A. The Radio Corporation of America has license under all, the Olympic Radio—I have forgotten the exact name, Olympic Radio Company. The Sylvania Company in the field of black and white monochrome television, that is, is limited to the Loughren patent, but they also have license rights in the color television area.

That is all I think of at the moment. There are a number of small companies that are not of great importance and I just cannot remember them all.

Q. Now, I am going to call off the names of some manufacturers of television receivers. Is it your impression that you have named all of the prominent companies, at least, that are licensed under this patent?

A. That is my impression.

Q. Now, I am going to call off some names of manufacturers of television receivers and I would like you to tell me, in each instance, whether the company that 924 I have just named has a license under the patent in suit.

Zenith?

A. No.

Q. Motorola?

A. No.

Q. General Electric?

A. No.

Q. Trav-Ler?

A. No.

Q. Philco?

A. No.

Q. Admiral?

A. Yes.

Q. You didn't name Admiral. Was that just one you forgot?

A. That was one I forgot. That would come in the second category of people that have a license under a group.

Q. Admiral has a package license, then, rather than one specifically limited to this patent?

A. Correct.

Q. So that brackets them with RCA and Sylvania.

A. That is correct.

925 Q. Does Emerson have a license under the patent in suit?

A. No, no.

* * * * * *

1353 E. A. RUESTOW, called as a witness on behalf of the Plaintiff in rebuttal, having been previously duly sworn, was examined and testified further as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Ruestow, did you examine the exchange of correspondence between myself and Mr. Crotty, represented by Defendant's Exhibits F-9 and F-10?

A. Yes, I did, this morning.

Q. And at the time period of those two exhibits, how many patents did the plaintiff have that were of general use in monochrome television receivers?

A. There were three, perhaps four.

Q. In the letter, you will notice what you might call for brevity a 50 per cent, 80 per cent, 100 per cent formula, What did that mean?

A. Well, at that time there was an attempt to reach a rough approximation as to what was a reasonable valuation of the patents involved at the time.

* * * * * *

1354 By Mr. Dodds:

Q. What did that mean? What did the 50 per cent and the 80 per cent and the 100 per cent—what did they apply to in the numbers of patents?

A. Oh, well, 50 per cent, if it was only one patent licensed or used.

Q. Fifty per cent of what?

1355 A. Fifty per cent of the base rate of the then standard license agreement, which was .95 per cent; so, in other words, 50 per cent is .475 per cent for one patent.

Q. And for two patents it was—

A. Eighty per cent.

Q. Of the base rate?

A. Correct.

1356 Q. And at the time that you made—

The Court: And 100 per cent covered how many patents?

Mr. Dodds: All the patents which the plaintiff had.

The Court: All right.

The Witness: Four or more.

Mr. Dodds: Three or more, I think it was.

The Witness: Three or more? I have forgotten.

By Mr. Dodds:

Q. At the time you attempted to reach this reasonable allocation, did you seek the opinion of outside counsel?

A. Yes.

Q. At that time, in 1959, to the best of your knowledge, were any of the American companies besides RCA manufacturing color television receivers?

A. At that time, RCA was the only manufacturer of color.

Mr. Dodds: That is all.

1373 Mr. McDougall: His testimony was non-controversial as far as we were concerned.

The Court: All right.

Mr. McDougall: In other words, we acknowledge the facts Mr. Ruestow testified to, and the legal consequences we may want to battle at some other time.

1961 IN THE UNITED STATES DISTRICT COURT.

Northern District of Illinois,

Eastern Division.

Hazeltine Research, Inc., *Plaintiff,*

vs.

Zenith Radio Corporation, *Defendant.*

Civil Action No. 59 C 1847

FINAL JUDGMENT AND DECREE.

At Chicago, Illinois, in said Division and District on April 2, 1965, this matter coming on to be heard for the entry of a judgment and decree herein, and upon Findings of Fact and Conclusions of Law heretofore entered herein on January 25, 1965, as modified by this Court's opinion orally entered herein on April 1, 1965, and upon notice to all counsel of record, and the Court having heard the arguments of counsel and pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, and having hereby expressly determined that there is no just reason for delay in the entry of the following final judgment.

It Is Hereby Ordered that a joint and several judgment be entered herein in favor of Zenith Radio Corporation, the defendant and counterclaimant herein, and against

Hazeltine Corporation and Hazeltine Research, Inc.
1962 in the amount of Nineteen Million Forty Two Thousand One Hundred Seventy Three Dollars ($19,042,173.00), together with the costs of this suit and a reasonable attorneys' fee, to be fixed by the further order of this Court.

It Is Further Ordered that Claim Nos. 1, 2 and 4 of United States Letters Patent No. 2,547,648 are invalid and void and that even if valid, none of claims 1, 2 or 4 of said Letters Patent has been infringed by the defendant, Zenith Radio Corporation.

It Is Further Ordered that the plaintiff's complaint herein is dismissed for want of equity.

It Is Herewith Decreed that Hazeltine Corporation and its subsidiary Hazeltine Research, Inc. and their respective successors, affiliated or controlled subsidiary companies, their respective officers, directors, agents, servants, employees, attorneys and all persons or corporations acting or claiming to act on behalf of them, shall be and hereby are enjoined and restrained from:

A. Conditioning directly or indirectly the grant of a license to defendant-counterclaimant, Zenith Radio Corporation, or any of its subsidiaries, under any domestic patent upon the taking of a license under any other patent or upon the paying of royalties on the manufacture, use or sale of apparatus not covered by such patent.

1963 B. Conditioning directly or indirectly the grant of any license to defendant-counterclaimant, Zenith Radio Corporation, or any of its subsidiaries, under any domestic patent upon the payment of the same or greater royalty rate than the rate at which licenses have been granted or offered to others under a group of domestic patents which includes said patent.

C. Entering into, adhering to, enforcing or claiming any rights under any contract, agreement, understanding, plan or program, with any other person, company, patent pool, organization, association, corporation or entity which directly or indirectly restricts or prevents defendant-counterclaimant, Zenith Radio Corporation, or any of its subsidiaries, from exporting any electronic apparatus from the United States into any foreign market.

It Is Further Ordered that jurisdiction of this cause be and it is hereby reserved for a further hearing on June 1, 1965, on the amount of damages asserted in the claims for damage accruing by virtue of cartel restrictions in Australia and England during the damage period alleged, said hearing to be limited in accord with this Court's oral opinion entered herein on April 1, 1965.

Enter:

R. B. Austin,
Judge.

Dated: April 5, 1965.

1964 UNITED STATES DISTRICT COURT,

Northern District of Illinois,

Eastern Division.

Name of Presiding Judge, Honorable Richard B. Austin.

Cause No. 59 C 1847 Date Apr. 5, 1965

Title of Cause

Hazeltine Research vs. Zenith Radio

Brief Statement of Motion

Ruling on Objs to Proposed Judg Order, Etc

Enter judg & Decree—Deft-Counterclaimant recover of pltffs-counterdefts Hazeltine Corp., et al the sum of $19,042,173.00 & costs & atty's fees—claims 1, 2 & 4 of U. S. Letters Patent No. 2,547,648 invalid, etc. Pltff's complaint dismd—Hazeltine Corp., et al, enjoined, etc. Jurisdiction retained & further hrg contd to June 1, 1965.

Reserve space below for notations by minute clerk.

Enter order (Dft)

2018 UNITED STATES DISTRICT COURT.

Northern District of Illinois,

Eastern Division.

Hazeltine Research, Inc., *Plaintiff,*
vs.
Zenith Radio Corporation, *Plaintiff.*

Civil Action No. 59 C 1847

NOTICE OF APPEAL OF HAZELTINE RESEARCH, INC.

Notice is hereby given that Hazeltine Research, Inc., plaintiff and counterdefendant in the above-entitled action, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the "Final Judgment and Decree" entered on April 5, 1965, which recites that it is entered under Rule 54(b) of the Federal Rules of Civil procedure.

By this notice of appeal Hazeltine Research, Inc. does not waive its right to pursue its petition for writs of mandamus and prohibition, now pending before the Court of Appeals for the Seventh Circuit in *Hazeltine Research, Inc.* v. *Hon. Richard B. Austin, Judge,* No. 15106, and 2019 does not admit that said judgment is a valid final judgment under Title 28 U. S. C. § 1291 and Rule 54(b) of the Federal Rules of Civil Procedure.

Dated: April ....., 1965.

John T. Chadwell,
Victor P. Kayser,
M. Hudson Rathburn,
Attorneys for Hazeltine Research, Inc., Plaintiff-Counterdefendant.

Of Counsel:

Laurence B. Dodds,
59-25 Little Neck Parkway,
Little Neck, New York.

Chadwell, Keck, Kayser,
Ruggles & McLaren,
135 South LaSalle Street,
Chicago, Illinois 60603.

Mason, Kolehmainen, Rathburn & Wyss,
20 North Wacker Drive,
Chicago, Illinois 60606.

2022 UNITED STATES DISTRICT COURT,

Northern District of Illinois,

Eastern Division.

Hazeltine Research, Inc., *Plaintiff,*
vs.
Zenith Radio Corporation, *Defendant.*

Civil Action No. 59 C 1847

NOTICE OF APPEAL OF HAZELTINE CORPORATION.

Notice is hereby given that Hazeltine Corporation, against whom a "Final Judgment and Decree" in the above-entitled action was entered on April 5, 1965, hereby appears specially and hereby appeals to the United States Court of Appeals for the Seventh Circuit from said Judgment and decree, which recites that it is entered under Rule 54(b) of the Federal Rules of Civil Procedure.

By this notice of appeal Hazeltine Corporation does not admit that it is subject to the jurisdiction of this Court or that it is a party to the above-entitled action. Nor does it by this notice waive its right to pursue its petition for writs of mandamus and prohibition now pending 2023 before the Court of Appeals for the Seventh Circuit in *Hazeltine Corporation* v. *Hon. Richard B. Austin, Judge,* No. 15107, nor admit that said judgment is a valid final judgment under Title 28 U. S. C. § 1291 and Rule 54(b) of the Federal Rules of Civil Procedure.

Dated: April ..., 1965.

John T. Chadwell,
Victor P. Kayser,
Attorneys for Hazeltine Corporation.

Of Counsel:

Chadwell, Keck, Kayser,
Ruggles & McLaren,
135 South LaSalle Street,
Chicago, Illinois 60603,
RAndolph 6-2545.

IN THE UNITED STATES DISTRICT COURT.
(Caption—59 C 1847)

TRANSCRIPT OF PROCEEDINGS OF APRIL 16, 1965.

26 The Court: . . . I have little hesitancy in saying that I think that the evidence warranted doing what I did, and if I had to do it all over again I would do it all over again.

1 IN THE UNITED STATES DISTRICT COURT.
(Caption—59-C-1847)

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause, before the Honorable Richard B. Austin, one of the Judges of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois, on Monday, May 3, 1965, at 10:00 o'clock, a.m.

5 The Court: The first hearing is going to be limited to this embargo business.

Mr. Kayser: Yes.

The Court: And if after that it appears that there is some reason for additional testimony, there being no embargoes for a certain period of time, why, then we will get to that step next.

6 Mr. McConnell, Sr.: That is quite a question. Now, this is not a new experience for me. I took depositions in the case with RCA in London on this very issue

and, No. 1, the Government employees are not free
7 to testify on this. They take what they call a Crown privilege, and they are not disposed to testify about their policies.

The Court: That is not unique to England, Mr. McConnell.

Mr. McConnell: I know that, but it is very definite in England, particularly when Americans are trying to try an issue.

And we couldn't get anywhere with it, and I am sure that counsel is not going to get anywere with it, but we will have a safari before we get through, all over the world, probably on all of these regulations. There isn't any question of what there was an embargo, but there is also no question but what that embargo, the policy behind it, was to lift it a year before the embargo actually was lifted, and in the meantime, as a customary thing, they granted one that I can stipulate about, but I could stipulate on the permits; so it is not a simple question at all, and it isn't one that I can stipulate about, but I could stipulate on the regulation itself.

6 UNITED STATES DISTRICT COURT,

Northern District of Illinois,

Eastern Division.

Name of Presiding Judge, Honorable Richard B. Austin.

Cause No. 59-C-1847, May 3, 1965.

Title of Cause:

Hazeltine Research Inc. v. Zenith Radio Corporation.

Brief Statement of Motion:

Motion of Plaintiff Hazeltine Research, Inc. for production of documents.

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel:

John T. Chadwell and Victor P. Kayser, 135 South LaSalle Street, Chicago, Illinois.

Representing:

Plaintiff Hazeltine Research, Inc.

Names and Addresses of other counsel entitled to notice and names of parties they represent:

Thomas C. McConnell and Phillip J. Curtis, 134 South LaSalle Street, Chicago, Illinois

and

Dugal S. McDougall, 135 South LaSalle Street, Chicago, Illinois, Attorneys for Defendant Zenith Radio Corporation.

Reserve space below for notation by minute clerk.

Leave to Zenith to fl. answer to mo. of pltff. o produce, instr. to lv. to Hazeltine to fl. reply in 10 days and said mo. taken under advisement. Cause contd. to May 25, 1965 for rept. on status.

IN THE UNITED STATES DISTRICT COURT.
(Caption—59-C-1847)

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause, before the Honorable Richard B. Austin, one of the Judges of said court, in his courtroom in the United States Courthouse at Chicago, Illnois, on Tuesday, May 25, 1965, at 10:00 o'clock, a.m.

2 Mr. Kayser: I am glad to be able to report that we have confirmed and are prepared to prove what we previously stated to be our understanding, namely, that in the case of England, until June 7, 1959, by reason of the embargoes or import restrictions, Zenith could not have imported radio and television sets in commercial quantities into England, and that in the case of Australia the date until which such importation could not have taken place was not February 1, as we previously indicated, but, actually, February 23, 1960, except that there were some exceptions beginning August 1, 1959, whereby importers having certain quotas could have imported certain limited numbers of sets from the United States.

We have also verified and are prepared to prove
3 that Zenith could not, as Mr. McConnell suggested, could not have gotten special licenses during those periods to import radio and television sets, the essential fact being that these policies against importation had been put in these countries to conserve dollar balances, and importations were allowed only as to essential goods and were not locally available, or not available from non-dollar countries.

6 The Court: Well, in regard to the embargoes, is there a contest in regard to that as to the dates they started, Mr. McConnell?

Mr. Kayser: I submitted a sitpulation on that subject and Mr. McConnell has—

7 Mr. McConnell: Definitely. I don't agree with a word that the man said, not one word.

The Court: That does not surprise me either.

Mr. McConnell: I made some investigations, too. We can prove exactly the opposite of what he said.

* * * * *

9 The Court: Will you be back from Europe in July, Mr. McConnell?

Mr. McConnell: Well, your Honor, this deposition thing, I understood, is not a one-way street. I mean, our information is exactly the opposite from what counsel has been telling your Honor.

As early as 1956 it was perfectly possible to get radios and television sets into Australia in commercial quantities, and we are prepared to show that. We have had some investigations made in Australia, too.

* * * * *

10 Mr. McConnell: And, of course we want to take depositions, too. We are not going—this is no default matter. This is a very serious controversy on this, and if he tells your Honor that he is going to bring somebody from Australia, we would like to take depositions during the summer months.

* * * * *

11 Mr. McConnell: On this other thing, your Honor—of course, I haven't been to Europe. Counsel has. But we have been in contact with counsel in London, and my information at the present moment is that this testimony in London is not what counsel has represented it to be, and while I haven't interviewed witnesses, I have a pretty

fair idea what witnesses are available and we want to take depositions in London if he is taking them on the 25th.

The Court: We are not going to stop you. You are going to have an equal chance.

Maybe if this is a highly controversial issue regarding which there is considerable doubt one way or the other, maybe we should proceed with the embargo phase first and the other phase second.

* * * * *

Mr. Kayser: Well, I would like to ask the question, if I may, Your Honor: Do I understand that it is your present thinking that if we establish this embargo that we have the affirmative burden of destroying the case, so to speak, that they have made on damages?

The Court: Well, as I understand, tentative findings were made and you came in and persuaded me to, as of this time, vacate them, and those findings were made on the evidence that I heard in court of witnesses who were cross-examined by counsel for your client, and it isn't as though they were snuck in the back door and you never had a chance to cross-examine about it, inquire about it, or anything else. This wasn't doen surreptitiously, and I think the burden is on you to show that the Court is in error in following the evidence that was presented to me at the time of the hearing. That is what I acted on.

Mr. Kayser: Yes.

117 IN THE UNITED STATES DISTRICT COURT.
(Caption—59-C-1847)

MOTION FOR LETTERS ROGATORY.

Now comes Zenith Radio Corporation, Defendant and Counterclaimant herein, and asks that this Court issue Letters Rogatory directed to the appropriate judicial authority in the United Kingdom, in London, England, requesting that Norman H. Nail or such other person having custody of the records of the Import Licensing Branch of the English Board of Trade be ordered and directed by appropriate judicial order to appear before a Consul General, Consul, Vice-Consul, or Consular Agent of the United States of America, at the American Embassy, Grosvenor Square, London, England, at 10:00 o'clock A.M. on June 22, 1965 and/or on such other dates and times as may be appointed and bring with him the documents and records of said Board of Trade constituting applications for issuance of permits and permits issued thereon to import into the United Kingdom from the United States
118 and Canada during the years 1956, 1957, 1958 and the first five months of 1959 radio receiving sets, television receiving sets, gramaphones with electrical amplification, amplifiers, and loudspeakers, other gramophones (including record players and tapes) and also component parts for the above, and for cause says:

1. That Hazeltine Research, Inc. and Hazeltine Corporation have moved to set aside certain finding of fact entered by this Court in this cause and in support of said motion have represented to this Court that a witness by the name of Norman H. Nail to be produced to testify from the English Board of Trade will testify under oath that it was impossible to export luxury goods not on the free license list from the United States into the United Kingdom in commercial quantities prior to June 8, 1959.

2. That the records of the English Board of Trade show that during the years 1956, 1957, 1958, and the first five months of 1959 gramaphones (including record players and tapes) which could only be exported into the United Kingdom by private license and which were classified as luxury goods in exactly the same way as radios and television sets were imported from the United States into the United Kingdom in an amount in excess of $1,500,000, and gramaphones with electrical amplification, amplifiers and loudspeakers during the same period in an amount in excess of $40,000.

3. That during the years 1956, 1957, 1958, and the first five months of 1959 television sets were imported into the United Kingdom from the dollar area of Canada and the United States in an amount in excess of $328,000.

119 4. That during the year 1958 and the first five months of 1959 component parts for gramophones, radios, and television sets were imported into the United Kingdom from the United States in the approximate amount of 1,445,089.

5. That the above records are relevant and material to the issues in this case in that they will constitute evidence impeaching the tendered testimony of the witness Norman H. Nail and will show affirmatively that the import of radio and television sets and components was commercially possible during the entire damage period used by Zenith in the computation of its damages in the United Kingdom and for a substantial period of time prior thereto.

Thomas C. McConnell,
Attorney for Zenith Radio Corporation, Defendant and Counterclaimant.

Of Counsel:
McConnell, Freeman, Curtis & McConnell,
134 South LaSalle Street,
Chicago, Illinois 60603,
RAndolph 6-9131.

State of Illinois, }
County of Cook. } ss.

Thomas C. McConnell, being first duly sworn, on oath deposes and says that he is the attorney for Zenith Radio Corporation, Defendant and Counterclaimant in the above-entitled cause, and is duly authorized to make this affidavit for and on its behalf; that he has read the above and foregoing Motion for Letters Rogatory by him subscribed; 120 that the information thereon contained was secured by him from the United States Department of Commerce Report No. FT410 (Bureau of the Census) and from a certain Report on the Production and Marketing of Radio and Television Receivers, Phonographs, and Tape-Recorders in the United Kingdom published April, 1959, by the Economist Intelligence Unit, Ltd., London, England, all of which information he is informed and believes to be true and correct.

Thomas C. McConnell.

Subscribed and sworn to before me this 8th day of June, 1965.

Francis J. Mahon,
Notary Public.

(Seal)

IN THE UNITED DISTRICT COURT.
(Caption—59-C-1847)

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable Richard B. Austin, one of the judges of said court, in his courtroom in the United States Courthouse at Chicago, Illinois, on Wednesday, June 9, 1965, at the hour of 10:00 o'clock a.m.

Mr. Kayser: Your Honor, we have a couple of problems with it. We realize, of course, that on discovery the rule is in favor of liberality. But in brief we are taking the deposition of a man from the Board of Trade who we believe will testify that the radio and television sets could not have been imported in commercial quantities. The letters roatory ask for the production by the Board of Trade of applications and grants of licenses for such matters as gramophones, which is phonographs, tape recorders and tapes, and component parts of radio, television, gramophones, and only one paragraph actually deals with
2 television as such, and none with radio as such. So we do question whether the documents—

The Court: What is your interest in these other products?

Mr. McConnell: The other products are the same classification, your Honor. They have the same category rating. They have come in by private application and license.

The point made here is, by this witness, that it is impossible to get a private license application granted. And in the year preceding our damage period, a million dollars of phonographs were admitted on private applications which were the same kind and the same category, and fell within the same classification as radios and televisions.

And our point is that this claim that, because of currency restrictions and all of that, private applications would not be granted as a matter of policy, is absolutely false; that these very same classified goods came in after a private application, after a hearing before the Board and the issuance of a permit.

• • • • •

128 IN THE UNITED STATES DISTRICT COURT.

• • (Caption—59-C-1847) • •

MOTION FOR LETTERS ROGATORY.

Now comes Zenith Radio Corporation, defendant and counterclaimant herein, and asks that this Court issue Letters Rogatory directed to the appropriate judicial authority in the Commonwealth of Australia requesting that (a) Francis A. Meere, an officer or employee of the Department of Trade of Australia, or such other proper person as may have custody of the records of the Import Licensing Branch of the Department of Trade of Australia, and (b) Admiral of Australia Pty. Ltd., by an officer or such other competent person as may have custody of its records, be ordered and directed by appropriate judicial order to appear before a Consul General, Consul, Vice-Consul, or Consular Agent of the United States of America, or
129 before some other competent officer, at a time, date and place to be appointed and bring with them for use as evidence the documents and records constituting applications to said Department of Trade for issuance of permits made or filed by Admiral of Australia Pty. Ltd., or copies thereof, together with all permits issued by said Department thereon, or copies thereof, to import into Australia from the United States during the years 1956, 1957, 1958, 1959 and the first two months of the year 1960

television receiving sets, chassis, and component parts therefor, and for cause says:

1. That Hazeltine Corporation and Hazeltine Research, Inc. has moved to set aside certain findings of fact entered by this Court in this cause and in support of said motion has represented to this Court that an official or employee of the Department of Trade of Australia will testify under oath that it was impossible to export luxury goods such as television receiving sets not on the free license list from the United States into Australia in commercial quantities prior to February 23, 1960.

2. That defendant-counterclaimant is informed and believes that the records of the Department of Trade of Australia and the records of Admiral of Australia Pty. Ltd. establish that during the years 1956, 1957, 1958, 1959, and the first two months of 1960 Admiral of Australia Pty. Ltd. actually obtained import permits for television receiving sets, chassis, and component parts therefor in substantial commercial quantities.

3. That the documents constitute evidence relevant and material to the issues in this cause, in that they will affirmatively show that the importation of television receiving sets, chassis, and components therefor was commercially possible during the entire damage period used by Zenith in the computation of its damages in Australia and for a substantial period of time prior thereto.

Thomas C. McConnell,
Attorney for Zenith Radio Corporation, Defendant and Counterclaimant.

Of Counsel:

McConnell, Freeman, Curtis & McConnell,
134 South La Salle Street,
Chicago, Illinois 60603,
RAndolph 6-9131.

IN THE UNITED STATES DISTRICT COURT.
(Caption—59-C-1847)

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable Richard B. Austin, one of the judges of said court, in his courtroom in the United States Courthouse at Chicago, Illinois, on Monday, June 14, 1965, at 10:00 o'clock, a.m.

2 Mr. McConnell: And I find the Admiral Company has imported a lot of sets into Australia, made a lot of money there, and I want to prove it to offset the claim here that some member from the Board of Trade is going to be produced here at the hearing to testify that that is impossible.

Mr. Kayser: Your Honor, that doesn't accord with our understanding of the facts.

IN THE UNITED STATES DISTRICT COURT.
(Caption—59-C-1847)

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause, before the Hon. J. Sam Perry, one of the Judges of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois, on Wednesday, August 11, 1965, at 11:45 o'clock, a.m.

7 Mr. McConnell: Judge Austin said on that limited issue, i.e., whether or not there was a governmental embargo which would have absolutely precluded importation into these two markets only, England and Australia, I will permit proof to be taken and we will have a hearing on that issue only in October.

The Court: Do you propose to go beyond that in your—

Mr. McConnell: Yes, that is the basis of the objection. They propose to take not only testimony in evidence under this commission on the question of embargo, but also on the question of what market share or percentage Zenith could have had in that foreign market, and Judge Austin has made it clear that we only get to that issue if it 8 is first established that there was an embargo prior to or during any part of the damage period, and then we may get into the question of whether or not the—there should be some readjustment in the market share or percentage which was the damage computation.

* * * * *

9 Mr. Cook: Secondly, your Honor, we have already taken certain depositions in England with respect to the embargo point, and at that time Mr. McConnell noticed and did take depositions which were related solely to the second issue. He did—

The Court: Have you taken some deposition on that second issue?

Mr. McConnell: No. Your Honor, that is not quite correct.

* * * * *

The Court: I am asking you a question. He makes a statement.

Mr. McConnell: That's right, and he said solely on that second issue, and the answer is no. We took the depositions of three witnesses by agreement in England when they were over there before on this question of an embargo, and the testimony of those three witnesses—all three witnesses' testimony related to the question of whether or not there was in fact an embargo or whether or not in fact you could import a commercial quantity into England.

The testimony also related to the question of market 10 percentage, that is, one witness.

* * * * *

12 Mr. McConnell: Well, your Honor, on the depositions that were taken by Zenith in England, first of all there was a man named Mills, and by his testimony we authenticated and we proved up government statistics which showed that electronic products of a comparable category to radios an T.V. receivers during the period of the
13 alleged embargo were in fact imported in commercial quantity. That related directly to the issue of embargo. It is true that while the witness was on the stand, he was also examined on other matters.

The Court: I believe that was by agreement, though.

Mr. McConnell: By agreement.

The second witness, Clarkson, actually resided in Australia, but he happened to be in England at the time, and we used that opportunity to take his deposition.

He testified that a subsidiary of Admiral of Chicago, Admiral of Australia, imported in commercial quantity T.V.'s and radios during this period of the alleged embargo. That related directly to the embargo issue.

The third witness, the Spanish witness, in Spain they have import provisions, not embargoes. They don't have embargoes in any of these markets. They have them comparable to the import licensing provisions in England, and during the period of those provisions or restrictions this witness testified that he was able to import from Zenith assembled kits of components, and then add the cabinet to them and sell them in commercial quantity in that
14 market. That related directly to the question of whether or not, with these restrictions, you could carry on any kind of business in that market, so that all three witnesses' testimony related to the embargo issue, and Judge Austin I think has made it clear that until and only if he determines that it was impossible to import into these two markets, England and Australia, in commercial quantity, is he going to the question of what market share Zenith could have enjoyed during the damage period.

182 IN THE UNITED STATES DISTRICT COURT
(Caption—59-C-1847)

MOTION TO POSTPONE TAKING OF MARKET SHARE EVIDENCE UNTIL AFTER DETERMINATION OF THE EMBARGO ISSUE.

1. This Court previously indicated that the only issue to be tried on October 11 would be the embargo issue and that only if Hazeltine proved an embargo would the Court go into the issue of market share. Accordingly, the Court took under advisement until after the October hearing Hazeltine's Rule 34 motion which would have required Zenith to produce documents relating to the market share issue. In denying Hazeltine's motion to vacate the antitrust findings and take further evidence, except in the following limited respect, the Court, on April 1, 1965, said (Tr. pp. 360-361):

> "The Court feels that in regard to a very limited degree, that perhaps there should be further proof solely on these two questions—the questions of the damages in regard to Australia and the damages in regard to England.
>
> "In regard to Canada, there will be no change
183 as far as the Court is concerned. I feel that counsel should have an opportunity to offer what proof he can adduce in support of the statements made here and the offers of proof made. And it will be limited to this, let me assure you: As to whether or not radios and televisions could have been imported into England and Canada (sic) [Australia] in commercial quantities prior to the start of the damage period. And in the event it is established that they could not, I would think it would require a readjustment into the percentage figure of the market."

On May 10, 1965, the Court said (Tr. p. 5):

"The Court: The only thing I am going to have a hearing on on June 1 is the question of—is on the counterclaim, period, and in regard to the embargoes against imports to Australia and England, period. That is all I am going to hear."

At the hearing on May 25 on Hazeltine's Rule 34 motion and to reset the June 1 hearing date the Court said Hazeltine had the burden of showing an embargo (Tr. pp. 13-14):

"Mr. Kayser: Well, I would like to ask the question, if I may, your Honor: Do I understand that it is your present thinking that if we establish this embargo that we have the affirmative burden of destroying the case, so to speak, that they have made on damages?"

"The Court: Well, as I understand, tentative findings were made and you came in and persuaded me to, as of this time, vacate them, and those findings were
184 made on the evidence that I heard in court of witnesses who were cross-examined by counsel for your client, and it isn't as though this were snuck in the back door and you never had a chance to cross-examine about it, inquire about it, or anything else. This wasn't done surreptitiously, and I think the burden is on you to show that the Court is in error in following the evidence that was presented to me at the time of the hearing. That is what I acted on."

With respect to the Rule 34 motion and the issue to be tried, the Court said (Tr. pp. 16-17):

"We will just put this over. I will take these under advisement until the fall and we will have a hearing on the 11th of October on the embargo issue."

2. On August 11, 1965 Hazeltine appeared before Judge Perry, who was sitting as Emergency Judge, and obtained commissions for taking evidence both in England and Australia on the issue of market share. The application was

opposed by Zenith on the ground that the motion was premature and that the only issue set for trial was the embargo issue. The matter of scheduling these depositions, if necessary, is the subject of a separate motion which was continued by Judge Decker until August 25 before this Court (see motion of Hazeltine and affidavit of Francis J. McConnell in opposition thereto).

185 3. By letter last Friday, August 20, counsel for Hazeltine advised Zenith's counsel that at the Wednesday hearing on August 25 they would request a postponement of the October 11 hearing on the embargo issue to permit them to take evidence on the market share issue, and ask that both issues be set for trial, with no interval between trials, some time before the year end.

4. Zenith objects to any postponement of the October 11 hearing date and the taking of evidence on the market share issue at this time on the grounds that such procedure involves unnecessary expense and delay and that the evidence taken thus far conclusively refutes any claim of an embargo in either England or Australia.

5. Contrary to representations made in open court, by counsel for Hazeltine there never has been an embargo, i.e., a governmental prohibition against importation of radios and TV receivers, in either England or Australia. At the most, there was during a period of time a requirement that licenses be obtained as a condition to importation. In the case of England this licensing requirement applied for only seven days of the damage period. Effective June 8, 1959, radios and TV receivers were added to the open general license (a general license to all importers to import the items listed thereon without specific application and permit) and from and after that date no license was 186 required to import these items. Prior to June 8, 1959, these items could be imported pursuant to individual licenses issued to importers. At least as early as November, 1958, the English Board of Trade, the licensing

authority, was considering removing all licensing requirements because of Great Britain's improved balance of payments position. The Board of Trade decision to add radios and TV receivers to the open general license was announced to improters in May, 1959, so that importers could have placed orders at that time or before for delivery after June 8, and no license would have been required.

In these circumstances, it is apparent that but for the British patent pool restriction on imports Zenith could have imported the number of radio and TV sets shown in its damage computation during the damage period (June, 1959-May, 1963).

Hazeltine's position, as we understand it, therefore, is reduced to the argument that Zenith's damage computation was based on the assumption of a mature or fully developed market, which is was not, and that prior to June 8, 1959 it would have been impossible to obtain individual licenses to import radio and TV receivers in commercial quantities and so develop a mature market. However, the testimony of Hazeltine's own witness, Norman H. Nail, coupled with government statistics showing the fact of importation of electronic equipment and components, in the same category as radios and TV receivers, in commercial quantities completely refutes such a claim.

187

Nail, an administrative official with the Import Licensing Branch of the Board of Trade, testified that gramophones, tape recorders, record players, radiograms, and components for radio and TV receivers, including picture tubes, transistors, crystal diodes, electronic capacitors, electronic resistors, electronic inductors, and electronic loud speakers, were all in the same category as completed radio and TV receivers and, therefore, could only be imported prior to June, 1959, pursuant to specific individual license or permit (Nail Dep. pp. 59-60; pp. 78-79):

"Q. I take it that from your testimony down to

date prior to that time [June 8, 1959] every one of those commodities would fall within your classification of consumer durables. Is that right?"

"A. Yes."

"Q. And according to the policy you have told us about here would be treated in the same way."

"A. Yes."

(Nail Dept. pp. 60-61.)

188 Official government statistics published by Her Majesty's Customs and Excise show that all of the above-mentioned items which Nail said were in the same category as radios and TV and subject to the same policy, were imported in commercial quantities from the dollar area (United States and Canada) in the years 1955, 1956, 1957 and 1958.

Nail further testified that the Board of Trade in granting licenses would not discriminate between importers and that, therefore, if one importer obtained a permit to import 200 American television sets, for example, other importers could import a like number or, "in other words, you would have to multiply that by several hundred, by the number of importers who wanted to do the same." Nail Dep. p. 81.)

Similarly, Nail testified that the Board of Trade would not discriminate between country or origin if both countries were in the dollar area and that, therefore, an importer could obtain a license to import as many American made sets as were imported from Canada.

"Q. If say 8,000 sets came in from Canada you would permit 8,000 sets from the United States?"

"A. If we had the aplication." (Nail Dep. p. 82.)

189 Official government statistics published by Her Majesty's Customs and Excise show that in fact TV receivers were imported in commercial quantities from Canada in 1957, when individual licenses were required.

5. In the case of Australia there were similar licensing provisions, but there never was any embargo, as such. It is undisputed that after February, 1960 there was no license requirement with respect to importation of radio and TV receivers, or components therefor, from the dollar area. Prior to that time a license permit was required as a condition to importation. That such permits could be obtained to allow importation in commercial quantities is conclusively shown by the experience of Admiral of Australia, Pty., Ltd.

In 1955 Admiral Corporation (U. S. Admiral) formed a 50/50 joint venture with General Industries. The joint venture organized Admiral of Australia, Pty., Ltd., which set up a local radio and TV assembly operation in Sydney, Australia. Starting in 1956, U. S. Admiral shipped components and assembled kits of components for radio and television receivers, and some completed television sets, to Admiral of Australia. The components were imported pursuant to import licenses obtained by Admiral of Australia and assembled locally into completed sets. (Clarkson dep. pp. 103-104.)

190 In 1957 U. S. Admiral's sales to Admiral of Australia of radio and TV components (which were invoiced at manufacturer's cost plus an eight per cent mark-up) amounted to $687,184. In 1958, sales were $346,879, and in 1959, $34,463 (Humrecht Dep. pp. 1-10).

Radio and TV components were in the same category as completed radios and TV sets and other electronic equipment and could only be imported during this period pursuant to individual license.

John Clarkson, Managing Director Admiral of Australia, testified that "Admiral of Australia, Pty., Ltd. was granted import licenses to import components in commercial quantities" and that during the period 1955-1957 "it was widely accepted that Admiral was either first or second in [tele-

vision] sales." (Clarkson Dep. p. 104.) According to U. S. Admiral's 1957 Annual Statement, Admiral of Australia's net earnings for 1957 were $1,134,410 after taxes, and U. S. Admiral received as a dividend or profit from the joint venture for 1957, $336,900.

It is, therefore, inconceivable that Hazeltine can establish an embargo in Australia either before or during the damage period, and any testimony that licenses could not be obtained would be impeached by the Admiral experience.

191 6. Under these circumstances, Zenith submits that to take evidence at this time on the market share issue is not only an academic exercise but an extremely burdensome and expensive procedure. Although Zenith is prepared to meet this issue, if necessary, and, has already taken evidence which fully corroborates its market share estimate in both markets, it is submitted that on the presently known facts and in the interest of orderly procedure no useful purpose would be served by going forward with this proof at this time.

Wherefore, Zenith Radio Corporation prays that the taking of testimony on the market share issue be postponed pending determination of the embargo issue and that the trial proceed on the embargo issue, as scheduled, on October 11.

Respectfully submitted,

Thomas C. McConnell,
Francis J. McConnell.

Of Counsel:
McConnell, Freeman, Curtis &
McConnell,
134 South La Salle Street,
Chicago, Illinois 60603.
RAndolph 6-9131.

IN THE UNITED STATES DISTRICT COURT.
* * (Caption—59-C-1847) * *

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable Richard B. Austin, one of the Judges of said Court, in his courtroom in the United States Courthouse at Chicago, Illinois, on Wednesday, August 25, 1965, at 10:00 o'clock, a.m.

* * * * * *

17 Mr. McConnell: I think we have got a more basic problem which these commissions issued by Judge Perry raised, and that is whether or not we should take evidence at this time on the question of market share, which brings me to our motion, Zenith's motion to postpone
18 the taking of such evidence until after the determination of the embargo issue.

The Court: Well, in view of the fact that depositions have already been taken on behalf of Zenith in regard to the market share issue, why now drop the matter?

Mr. McConnell: Because the qeustion is whether or not we go back to England, make a second trip back there to take evidence on market share when it appears that we will never reach that issue. They haven't made out an embargo. They can't make out an embargo and they have done everything they con on that issue in England already. They have taken the testimony of the official with the licensing department of the English Board of Trade, and as we set out in this motion, his testimony conclusively shows that they cannot make out an embargo; so what we are objecting to is going through an academic exercise and getting involved in an issue which we are never going to reach, at least it appears likely that we will never reach it.

Now, if the Court please, when we had this matter up before, last spring, your Honor said that the only issue
19 that you were going to try at this time was the question of embargo, i.e., was there a Governmental prohibition on importation of radios and TV recivers into these two markets, England and Australia, and only if Hazeltine carried the burden on that would we get to the question of market share.

* * * * *

The Court: Well, is it your position that in the event there is no establishment of an embargo that the evidence that has heretofore been submitted in regard to market
20 share is the only evidence that should be considered by the Court.

Mr. McConnell: No, I don't think your Honor is ever going to consider the market share evidence.

The Court: Well, I mean, I did hear some, otherwise I couldn't have come up with some figures at the time of the trial or at the conclusion of the trial. Somebody testified in regard to what they assumed that the market share would be in the event that there wasn't an embargo.

Mr. McConnell: All right.

Well, now, as I understand your Honor's ruling, unless they can first show an embargo we never get to the question of market share or whether or not there should be some readjustment, as your Honor put it, in the market percentages or shares on which our damage computation was based. We have got to cross the first hurdle first, and that is to show that there was this embargo. And what we are saying is that unless they can carry the burden on that, we will never get to the second issue.

* * * * *

27 Mr. F. J. McConnell: Now, Mr. Kayser hasn't suggested any other testimony that he is going to take in England on the question of embargo except letters now that

he wants against our distributor Ramsay. He couldn't possibly prove an embargo by our distributor Ramsay. The only way I know to prove an embargo, and it has already been disproved by the testimony taken, would be by the statutes, regulations, and orders of the British Board of Trade and testimony of an official of the British Board of Trade.

• • • • •

31 The Court: Why in the world did you go into the question of market share when you were over there?

Mr. McConnell: Because, No. 1, we didn't know what testimony would be produced by Hazeltine at the time we noticed thise depositions. No. 2—

• • • • •

Mr. McConnell: (Continuing) No. 2, the testimony of those witnesses did, in fact, relate to the question of embargo, and while we had them on the stand, those same witnesses, we also went into the question of market share. Briefly, your Honor, the one witness Mills, by him we proved up British Government statistics which show imports of electronic equipment and components for radio and TV in commercial quantities during the period of this claimed embargo when they said you couldn't get a license to import. Now, we proved that up. That directly related to the question of embargo with that witness.

32 While he was on the stand we also asked him, because he had ben in charge of a study—market study that had been made for Zenith, in which these Government statistics had been included, we also asked him his opinion as to the share of the market that Zenith could have obtained.

The Court: Whether or not that will be admissible is something that has not been—

Mr. McConnell: We never get to it if we don't get beyond—

The Court: We may never even get to it if it appears that there wasn't an embargo, too.

Mr. McConnell: Exactly, exactly. Maybe it was an abundance of caution on our part, but, anyway, that is it.

All right, now, the second witness, Clarkson, really was from Australia but he happened to be in London at the time, every fortuitous, and he was the managing director of Admiral of Australia, and during the period of the claimed embargo in Australia U. S. Admiral was shipping TV and radio components for local assembly in Australia by Admiral of Australia in commercial quantities,
33 $800,000 in 1957 alone, and we got that testimony from him. And he said that all came in pursuant to application and permits issued by the Department of Trade of Australia, directly relating and solely relating to the question of embargo.

The third witness was our distributor in Spain, a man by the name of Ribalta, and the testimony there related to the nature of his local assembly operation in Spain and the share of the market that he had been able to obtain over a four-year period of time. But in Spain they had license—there is no embargo in any of these countries, but they have licensing provisions and you have to get a license, during part of the period involved, and they had similar licensing in Spain, and yet despite those licensing provisions he was able to obtain permits and import these components and assemble the kits of components for local assembly.

* * * * *

47 The Court: Do you understand that on the basis of my ruling heretofore that nothing in regard to market share is going to be heard by this Court until the embargo thing is determined? Do you understand that?

Mr. Kayser: Yes, your Honor, you have made that clear.

The Court: You understood it?

Mr. McConnell: I understand it.

Mr. Kayser: Yes.

* * * * *

Mr. McConnell: No, I know that, but we are going to have a small-scale trial over there in London, calling witnesses and Zenith calling witnesses to counter the Hazeltine witnesses.

The Court: If I assure you, Mr. McConnell, that if you are not sustained on the embargo issue that I will give you additional time to depose whatever witnesses you want to prior to the opening of the market share evidence, you don't have to plan on doing that at this time, and I give you that assurance, that you are not foreclosed by virtue of the fact that on this occasion you don't get your witnesses in to go into market shares, under those circumstances would you feel that maybe you could go along with this?

• • • • • •

The Court: Yes. And I suggest to you that you list them in separate columns, I mean, embargo witnesses and share-of-the-market witnesses. It may be that they are not going to be at all concerned because of their attitude that you have insufficient proof to even care who you put on in regard to having in mind that I have assured them that they are going to have ample opportunity to produce or take other depositions or produce witnesses after I have ruled on the embargo issue.

• • • • • •

Mr. Kayser: Next, we understand that if we prove the Governmental restrictions on exports, as we expect to, that then the Court would set a future date for hearing on the—

The Court: I think that is everybody's understanding.

Mr. Kayser: Yes, on the market share matter, the date to be such as to give the parties a reasonable opportunity to take depositions on the market share matter.

The Court: To go traveling around the world again. All right.

• • • • • •

204 IN THE UNITED STATES DISTRICT COURT.
(Caption—59-C-1847)

ORDER.

This cause coming on to be heard on plaintiff's motion to fix the date for certain depositions and defendant's motion to postpone the taking of evidence on the market share issue, and the Court having heard oral argument on the motions and being fully advised in the premises;

It Is Hereby Ordered that:

1. The depositions of plaintiff in England on the import restrictions issue shall commence on September 13, 1965.

2. The depositions of defendant and of plaintiff in Australia on the import restrictions issue shall commence on September 27.

205 3. Plaintiff shall give defendant notice of the names of the persons to be deposed seven (7) days prior to taking of such depositions so far as is possible. As to witnesses whose identities are determined within said seven day period, plaintiff shall give as much notice as possible.

4. The foregoing dates and notice provisions are conditioned upon production of the documents by the Board of Trade of England on or before September 1 as represented by counsel for Zenith.

5. Said depositions in each country shall be limited to witnesses whose examination relates to the issue of import restrictions, except that a witness who is called to testify relative to import restrictions may also be interrogated concerning the market share question. However, no witness shall be called by either side for the purpose of obtaining evidence solely on the question of market share.

6. Neither party shall be subject to any time limitation

with respect to the aforesaid depositions in England and Australia.

206 7. The date set for the hearing on the issue of import restrictions is continued from October 11, 1965 to October 13, 1965 at 10:00 A.M. At that time, the Court will hear evidence solely on the question of the existence of import restrictions imposed by the governments of England and Australia preventing the importation of radio and television sets from the United States in commercial quantities. In the event that plaintiff succeeds in proving the existence of such import restrictions in either country, the Court will fix a date for a future hearing on the question of market share which date will provide sufficient time for the parties to conduct necessary discovery and to take necessary depositions in the foreign countries involved.

Entered this 26th day of August, 1965, at Chicago, Illinois.

R. B. Austin,
United States District Judge.

225 IN THE UNITED STATES DISTRICT COURT.
(Caption—59-C-1847)

MOTION TO DISMISS THE COUNTERCLAIM FOR FAILURE TO JOIN ZENITH SALES CORPORATION, WHICH IS AN INDISPENSABLE PARTY, AND FOR ALTERNATIVE RELIEF IF ZENITH SALES CORPORATION IS JOINED.

Now comes plaintiff-counterdefendant, Hazeltine Research, Inc., by its attorneys, and pursuant to evidence discovered and matters disclosed at the London depositions taken during the week of September 13, 1965, respectfully shows this Court as follows:

(a) In this case, Zenith Radio Corporation has asserted,

and obtained the entry of findings and conclusions and partial judgment on the basis of representation, that it was the exporter of Zenith radio and television sets into England, Australia and Canada during the entire alleged damage period from May 22, 1959 to May 22, 1963, that its exports of radio and television sets were interferred with,

and that it suffered loss of profits which it could have
226 realized from such exports.

(b) On September 16, 1965, at the said London depositions it was disclosed for the first time, by the English distributor of Zenith products, and by counsel for Zenith Radio Corporation, that since about January 1, 1960 Zenith Sales Corporation has been the exporter of Zenith radio and television sets to England, and that since that date Zenith Radio Corporation has merely been the manufacturer and supplier of radio and television sets sold to Zenith Sales Corporation for resale; all of which evidence and admissions were directly contrary to the previous assertions and representations made by Zenith to this Court and to plaintiff-counterdefendant.

(c) On information and belief, the same conditions applied as concerns exports to Australia and Canada, namely, that beginning about January 1, 1960, Zenith Sales Corporation became the exporter of Zenith radio and television sets to Australia and Canada, and Zenith Radio Corporation manufactured such sets and sold them to Zenith Sales Corporation for resale.

(d) Under the fact situation now revealed, and under Rule 19 of the Federal Rules of Civil Procedure, Zenith

Sales Corporation is an indispensable party to the
227 counterclaim, and as a matter of law the counterclaim

must be dismissed unless Zenith Sales Corporation is made a party, all as set forth in more details in the Memorandum in Support of this Motion, and the affidavit of Victor P. Kayser filed herewith.

Wherefore, plaintiff-counterdefendant moves the Court as follows:

1. That the counterclaim be dismissed on the ground that Zenith Sales Corporation is an indispensable party to the counterclaim, and it is not joined as a party.

2. That is Zenith Sales Corporation is joined as a party, such joinder shall be subject to the rights of Hazeltine Research, Inc. to plead, have discovery and make its defenses.

3. That if Zenith Radio Corporation's claim for damages is not dismissed, further hearings be ordered, both on the question of extent of alleged interference with the purported export business of Zenith Radio Corporation, and its alleged loss of export profits, and that such other proceedings be provided as are required by reason of the disclosure of Zenith Sales Corporation's interest in the subject matter. It is clear that Zenith Radio Corporation cannot, irrespective of any other issue, claim interference with, or damage to export business for the period when it was not the exporter.

228 There is filed herewith in support of this Motion the affidavit of Victor P. Kayser, one of the attorneys for Hazeltine Research, Inc., together with a Memorandum in Support of this motion.

Hazeltine Research, Inc.,
By John T. Chadwell,
Victor P. Kayser,
Attorneys for Plaintiff-Counterdefendant.

257 IN THE UNITED STATES DISTRICT COURT.
(Caption—59-C-1847)

State of Illinois, }
County of Cook. } ss.

AFFIDAVIT OF VICTOR P. KAYSER.

Victor P. Kayser, being first duly sworn on oath deposes and states as follows:

1. That there are attached hereto true and correct copies of the following:

(a) Pages 104, 106, 107, 109-117, 137-38, 173, 192-95 and 287 from the transcript of the deposition of Adam R. Ramsay taken in London, England on September 15-17, 1965.

(b) The order of the High Court of Justice in England, Queen's Bench Division, Master Lawrence, Master in Chambers, dated September 6, 1965, entered pursuant to the letters rogatory of this Court, and calling for the appearance and production of documents by Adam R. Ramsay on September 14, 1965 at 2:00 P.M.

258 (c) Document produced by Adam Ramsay at said deposition entitled "Zenith Distributor Agreement (Export Trade)", between Zenith Sales Corporation and United Merchantile Company, Ltd., dated January 2, 1960 and marked as Zenith London Deposition Exhibit No. 27 for identification.

(d) Invoices issued by Zenith Radio Corporation to United Merchantile Co., Ltd. dated July 24 and December 16, 1959, and invoices issued by Zenith Sales Corporation to United Merchantile Company, Ltd., dated April 19, 1960, September 29, 1961 and June 26, 1962 which were among the group of invoices produced by Adam R. Ramsay on September 17, 1965, and marked as Plaintiff's London Deposition Exhibit 66 for identification.

(e) The following copies of documents or portions of documents which affiant states on information and belief to be true copies of documents filed by Zenith Radio Corporation with the Securities and Exchange Commission:

Page 3 of the 1960 Proxy Statement dated March 20, 1960.

Page 3 of the 1961 Proxy Statement dated March 20, 1961.

May 13, 1964 amendment to Employment Agreement between Zenith Sales Corporation and Leonard C. Truesdell, attached as Exhibit C to Zenith Radio Corporation's Form 10-K for 1964.

2. That until September 16, 1965, neither Hazeltine Research, Inc., nor its counsel, knew that beginning
259 about January 1, 1960, Zenith Sales Corporation became the exporter to England of Zenith radio and television sets, and that Zenith Radio Corporation then became the supplier of such sets which it sold to Zenith Sales Corporation for resale; that the statements in the supporting memorandum as to the circumstances of discovery of the aforesaid information are true and correct; that until September 16, 1965, neither Hazeltine Research, Inc. nor its counsel knew that the same facts were true as to exports to Australia and Canada; and that the statements in the accompanying motion and memorandum that Zenith Sales Corporation became the exporter as to Australia and Canada, and Zenith Radio became the supplier of the radio and television sets to Zenith Sales Corporation, about January 1, 1960 are made on information and belief.

Victor P. Kayser.

1 IN THE UNITED STATES DISTRICT COURT.
(Caption—59-C-1847)

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause, before the Honorable Richard B. Austin, one of the Judges of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois, commencing on Friday, October 15, 1965, at 10:00 o'clock, a.m.

9 JOHN Q. EWENS, called as a witness on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kayser.

Q. Will you please state your name?

A. John Q. Ewens.

Q. Where do you live, Mr. Ewens?

A. 57 Franklin Street, Canberra, Australia.

Q. By whom are you employed?

A. I'm employed by the Commonwealth Government of Australia in the Attorney General's department.

Q. What position do you hold in the Attorney General's Department?

A. Parliamentary draftsman.

Q. How long have you held that position?

A. Since 1949.

Q. And where is your office?

A. My office is in Canberra, the Federal Capital of Australia.

Q. Now, you were with the Commonwealth Government prior to 1949?

A. Yes, I was first appointed as an officer of the
10 Commonwealth Government in the Attorney General's Department in 1933.

Q. Will you trace your career from '33 to '49.

A. In 1933, I was appointed as a legal officer and received several promotions until my promotion to the position of parliamentary draftsman in 1949.

Q. What was the nature of your duties during the period 1933 to 1949?

A. They were generally legal professional duties and concerned with the drafting of laws for Australia, and matters concerning their enactment by Parliament, and generally putting them into effect, and other associated duties.

Q. Your work had to do with the drafting of legislation?

A. Yes.

Q. What was your educational background?

A. I obtained the degree of Bachelor of Laws in the University of Adelaide, South Australia, in 1929. And in the same year, 1929, I was admitted as a Barrister, Solicitor, Attorney and Proctor of the Supreme Court of South Australia, and in the following year as a Practitioner
11 of the High Court of Australia.

Q. As Parliamentary Draftsman, are you connected with any particular division of the Attorney General's office?

A. Yes. The office is divided into three divisions, and one of them is called the Parliamentary Drafting Division.

Q. What is your position in that division?

A. I am in charge of that division.

12 Q. So that the court can understand the set-up of the Attorney General's department, will you state briefly what the divisions are in the Attorney General's department, and describe very generally the duties of those

divisions other than the parliamentary draftsmen—drafting division.

A. Yes. I am speaking of the central office of the department in Canberra. There are three divisions. The parliamentary drafting division to which I have already referred; another is called the Crown Solicitor's Division, which is concerned with litigation to which the Commonwealth of Australia is a party, and also with conveyancing matters for the Commonwealth, and matters similar to those.

The third division has just had its name changed, and I'm afraid I don't carry the new name, which is rather long, in my head, but its previous name was the Legal Division and, with his Honor's permission, if I might refer to it as the Legal Division.

The functions of that division are broadly to give legal advice to the Commonwealth Government and Common-
13 wealth instrumentalities and agencies, and it also deals with the administration of those laws that are administered by the Attorney General's department of the Commonwealth of Australia.

Q. Yes. Who is your superior in the Attorney General's department?

A. My superior is the permanent head of the Attorney General's department, and the precise name of his office is Secretary to the Attorney General's Department.

Q. And who is his superior?

A. His superior is the Attorney General of the Commonwealth.

Q. What is the place of the Attorney General in the Government?

A. Well, the Attorney General is, first of all, a minister of the Crown, a minister of State, and he is also the chief or first law office of the Commonwealth of Australia.

Q. All right.

Turning now to the Parliamentary Drafting Division of which you have stated you are the head, will you state generally what the functions of that division are.

14 A. The functions of that division are the preparation of legislation—that is to say, bills for introduction into the Commonwealth Parliament, bills, that is, that are required by the executive government to be introduced.

Secondly, it's concerned with the drafting of rules and regulations and acts of the Parliament Commonwealth.

Thirdly, it drafts ordinances and rules and regulations under ordinances for commonwealth territories, and it has a number of ancillary and associated duties concerned with the bringing of legislation into force, the publication of legislation, and things like that.

Q. Now, as parliamentary draftsman, what staff do you have under you?

A. My professional staff is of the order of about twenty people.

Q. They are lawyers?

A. Yes, they are all legal practitioners.

Q. All right.

Now, who in your division attends to the drafting of legislation and regulations?

A. Oh, anyone could attend to the drafting of

15 legislation and regulations.

Q. Well, what part if any do you play in that?

A. My part is, in the first place, to have the overall control and supervision of the division. Then I also draft the more important legislation myself, and I settle the greater part of the legislation—I say legislation; I mean bills as distinct from legislation, the greater part of the legislation; I mean bills as distinct from legislation, the greater part of the legislation drawn by other officers in the division.

16 Q. Now, could you state or describe very briefly the procedure which is involved when your division goes about drafting a piece of legislation, a bill?

A. The first step in the drafting of a piece of legislation is a decision by the Cabinet that it wants legislation on the particular subject.

The department that will administer that legislation then gives me detailed instructions for its preparation.

The drafting then begins and the drafts are prepared by my offices, which might perhaps range from one for a simple bill to 20 or so with a long intricate bill, exchanged with the department until the department is satisfied and guided, of course, by my advice, that the bill will achieve the object that the Cabinet wishes to achieve.

When that point is reached, I submit the bill to a committee of the Cabinet known as the Legislation Committee and the duties of that committee is to examine the legislation and satisfy itself, guided by my advice and by the advice of the Attorney General, that the bill will
17 achieve what the Cabinet has set out to achieve.

After the Legislation Committee is satisfied with the bill a Minister would introduce it into one or other of the two Houses of the Australian Parliament, and assuming it didn't fall by the wayside, it would be passed by both houses and then it would be presented to the Governor General for the Royal assent.

Q. Now, what proportion of legislation enacted by the Parliament of the Commonwealth is drafted by your department?

A. My division would draft all the legislation that is introduced into the Commonwealth of the Australian Parliament except bills that might be drafted and introduced by private members, and they would be perhaps one or two in each year.

Q. You mean private members of the nongovernment members of the Parliament?

A. When I say "a private member," he can be a member—a private member means a member who is not a Minister, and he can be either on the Government side or on the opposition side.

Q. On the average, how many bills per year are introduced by such private members?

18 A. About one or two.

Q. Now, who drafts the rules and regulations which are made under statutes?

A. They are drafted by officers of my division.

Q. Now, in addition to the duties that you have described as head of the Parliamentary Drafting Division, have you performed any other legal duties or functions for the Australian Government since 1949?

A. Yes, in the period from 1949 to date I have acted on a number of occasions as Solicitor General of the Commonwealth of Australia.

19 Q. Whatare the duties of the Solicitor General?

A. Well, the Solicitor General is the second lower officer of the Commonwealth. I have already referred to the Attorney General as being the first lower office of the Commonwealth.

The Solicitor General is the second lower officer and his duties are generally to advise the Commonwealth on questions of law and also to appear as counsel in court in litigation in which the Commonwealth or its agencies might be parties.

Q. Now, how are statutes which have been enacted by the Australian Parliament, how are they published?

A. Oh, they are published in a number of ways.

Q. Would you describe them?

A. In the first place, a statute is published in pamphlet form. At the end of each calendar year all these acts are collected and published in an annual volume of statutes.

Thirdly, they are published in the form of reprints, that

is in the form of a statute as amended by subsequent statutes, and, fourthly, at intervals all the acts are col-
20 lected and published in reprint form in bound volumes.

Q. By whom are the statutes published?

A. They are published by the government printer of the Commonwealth of Australia.

* * * * * *

21 By Mr. Kayser:

Q. I will hand the witness a duly attested and certified copy of an Act of the Commonwealth of Australia
22 entitled, "Amendments Incorporation."

They have been marked as Plaintiff's Exhibit 64 for identification and I will ask him if he can identify that statute and state what it does.

* * * * * *

24 By the Witness:

A. These two statutes of the Australian Parliament, copies of two statutes of the Australian Parliament, entitled respectively "Amendments in Corporation Act, 1905" and "Amendments in Corporation Act, 1918," the latter statute amends the first statute.

* * * * * *

By Mr. Kayser:

Q. I will ask the witness whether or not this statute, as amended, provides any guide either in the draft-
25 ing or in the interpretation of other statutes?

* * * * * *

By the Witness:

A. I wouldn't say that the two statutes provide any guide in the drafting or the interpretation of statutes. What these two statutes taken together provide is for the reprinting of statutes that have been amended.

The law provides that if a statute that has been amended

is reprinted it must be reprinted with the amendment shown, and an indication of those amendments must be given either by a marginal note of a footnote, and there must be included in the reprint a short reference to every amending act that has been incorporated in the reprint.

Mr. Kayser: I will offer Plaintiff's Exhibit 64 for identification into evidence.

* * * * * * *

Mr. McConnell: I have no objection to its competency I cannot see that it has any relevance whatever to the
26 issues.

The Court: You have taken the words out of my mouth, Mr. McConnell, but if counsel assures me that he will connect it up and that it does have some relevance in connection with the subject matter before the Court, and will be clarified by additional testimony or additional exhibits, I will permit it to be received.

I have that assurance, do I?

Mr. Kayser: Yes. your Honor.

(The said document, so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT 64.)

By Mr. Kayser:

Q. What is the procedure involved in the making of rules and regulations under the statutes?

A. My division would receive instructions from the relevant departments for the rules or regulations that were required and they would then be drafted in my division and drafts exchanged with the department in much the same way as were bills, and when the department and
27 the Minister concerned were satisfied that the draft achieved the desired effect, the regulations would be submitted by the Minister to the Federal Executive Council, which in turn would submit them to the Governor General who would make them by signing them.

Q. Do such rules and regulations have the force of law in Australia?

A. The next step after their being signed by the Attorney General is for them to be notified in the Commonwealth of Australia Gazette.

From that point they have the force of law—they do have the force of law and they have the force of law as from the first moment of the day of notification unless some other date is specified in the rules or regulations as the date from which they are to have effect.

Q. Are the rules and regulations printed after notification?

A. Yes, after notification they are printed by the Commonwealth of Australia government printed.

Q. And must they then be laid before Parliament?

A. Well, the laying before Parliament is not a necessary connection with the printing, but they do have to be laid before Parliament within a certain number of days after they have been made.

Q. And who attends to laying the rules and regulations before Parliament?

A. That is the duty of one of the officers of my division and it is also the duty of another officer of my division to supervise this work and to see that it is carried out.

Q. Are the terms, "rules and regulations," do they refer to two different things or are they references to the same?

A. Virtually interchangeable terms.

* * * * *

By Mr. Kayser:

Q. I hand you a copy of the Commonwealth of Australia Acts, Interpretation Acts 1901-1964, which has been duly attested and certified and marked as Plaintiff's Exhibit 65 for identification.

I will ask the witness whether that Act has any application in the interpretation of the laws of Australia.

Mr. McConnell: I object to his interpretation of the Act. It speaks for itself, if the Court please.

The Court: No, the objection is overruled.

By the Witness:

A. The anwser to the question is that Section 2 of this Act provides that this Act and this Act as amended applies and is to be deemed to have applied to all Acts of the Commonwealth Parliament including this Act itself.

32 Mr. Kayser: I will offer Plaintiff's Exhibit 65 in evidence.

Mr. McConnell: May I see it.

Mr. Kayser: Surely.

Mr. McConnell: I haven't any objection except to its relevance.

The Court: Well, on your assurance that it will be connected up, it may be received.

The said document, so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT NO. 65.)

* * * * *

By Mr. Kayser:

Q. Is there any commonwealth legislation in Aus-

33 tralia which controls or regulates the importation of goods?

A. Yes.

Q. Are you familiar with this legislation?

A. Yes, I'm familiar with it.

Q. I will hand the witness a copy of the Commonwealth of Australia Customs Act, 1901-1936, which has been duly attested and certified, and marked as Plaintiff's Exhibit 66 for identification. I will ask the witness whether this document has to do with the control or regulation of the import of goods into Australia.

Mr. McConnell: I object to that. The document speaks for itself.

The Court: Overruled.

By the Witness:

A. This Act contains certain sections that do refer to the matter asked in the question.

By Mr. Kayser:

Q. Well, can you state as of what date is the Customs Act of Australia shown in that document?

A. This Act is the Customs Act, 1901-1936, and in this form it came into operation on the 7th of December, 1936.

Q. In other words, this shows the Customs Acts as amended up to December 7, 1936?

Mr. McConnell: Well, what—I object to it. What it shows is on the face of the Act I assume.

By Mr. Kayser:

Q. Well, will you refer—

The Court: The objection is overruled.

By Mr. Kayser:

Q. Will you refer to the Act by section.

A. As next is printed on this Act, as required by the Amendments Incorporation Act, it shows that this is the Customs Act as in force on 7th of December, 1936.

Mr. Kayser: I will offer Plaintiff's Exhibit 66 in evidence.

Mr. McConnell: I have no objection, except we are not concerned with the period of 1901 to 1936. I don't see any relevance.

The Court: The Court recognizes that. It may be received.

(The said document, so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT NO. 66.)

35 By Mr. Kayser:

Q. Now, I will hand the document back to the witness. I think the relevancy will be apparent in a minute. I hand the document back to the witness and ask him to take a look at Sections 50, 52(g), and 270.

A. Yes.

Q. And ask him to state the effect of those three sections.

Mr. McConnell: I object to that, what the effect is. The effect could be shown, I assume, by whether they were imports or whether they weren't imports.

The Court: Objection overruled.

By the Witness:

A. The effect of the three—

Mr. McConnell: Could I see that particular section. You have given me a big document here that I couldn't possibly read.

36 The Court: There are three sections he is talking about, aren't there?

Mr. Kayser: That is right.

The Court: Three sections. Do you have a copy of this?

Mr. Kayser: No, your Honor, we don't. These came with all these red ribbons, and it just wasn't possible to reproduce them.

The Court: You will get a chance to look at it, Mr. McConnell, before cross-examination. You have my assurance.

Mr. McConnell: All right.

By the Witness:

A. The effect of the three sections mentioned in the question is to enable the Governor General to make regulations prohibiting the importation of goods into Australia, and penalizing the importation of goods contrary to the regulations.

By Mr. Kayser:

Q. Now, can you state whether those three section, 50, 52(g) and 270—whether or not they remained in full force and effect from 1939 until December 14, 1956?

37 Mr. McConnell: I object to that. He hasn't shown the document. We are entitled to have the statute here, I would say.

This runs, as I understand it, up to 1936.

Mr. Kayser: I have asked him whether he can testify whether or not—

The Court: '36, as I recall, or as I understand it, was the last amendment.

Mr. Kayser: That is right, and I have asked—

The Court: And there is no amendments between '36 and apparently '56, so the '36 law would continue in effect unless it was repealed or amended or something else.

Is that right?

Mr. Kayser: Precisely.

The Witness: The sections referred to in the question were not amended or repealed in the period referred to in the question, and remained in full force during that period.

38 The Court: So that the law as it was in '36 was still the law in regard to 1956; is that right?

The Witness: Yes, sir.

The Court: All right.

Mr. Kayser: That is the point we wanted to make, your Honor.

The Witness: As to those three sections.

The Court: As to those three sections.

If that document is back there now, Mr. McConnell might like to look at it. I assured him he would have a right to—

Mr. McConnell: I don't understand this. 1956—he's got a law up to 1956, and I guess that's where we end.

Mr. Kayser: Oh, I don't think so, Mr. McConnell. That's not permitted.

The Court: Apparently in 1956 there may have been a repeal, there may have been an amendment. I'm waiting anxiously to find out what happened.

Mr. Kaiser: Your Honor, I hope to satisfy that curiosity next.

39 I have forgotten. Have you ruled on the offer of the exhibit?

The Court: It may be received.

By Mr. Kayser:

Q. I show the witness the Commonwealth of Australia Customs Act, 1901-1957, which has been duly attested and certified—

The Court: When you read it that way, does that mean it was first enacted in 1901, and this includes all amendments up to 1957? Is that what that means?

Mr. Kayser: Yes. And that, your Honor, is why we put in this reprint amendment to explain that that is what it does mean.

The Court: I mean, just so I understand.

Mr. McConnell: All of which I am willing to agree to, that you had a regulation in whatever period you want to tell us about.

40 Mr. Kayser: Mr. McConnell, we can never know what you are prepared to agree to, so we have to do our best to make our evidence.

Mr. McConnell: I told you I wasn't raising any question about any statute or any rule or any regulations, as to its authenticity. All you have to do is offer it.

By Mr. Kayser:

Q. As I started to say, I'm handing you, Mr. Ewens, the Commonwealth of Australia Customs Act, 1901-1957, which has been duly attested, certified, and which is marked

as Plaintiff's Exhibit 67 for identification, and ask you to state the date as of which the 1901 Act was amended. What is the date through which this statute carries?

A. This reprint includes all the amendments that were made up to the end of the year 1957. The last of those amendments was made by an Act that was assented to on 7 June 1957, except as to one portion of that amending act that came into force on 7 September, 1957. The last amending act came into force on the date I have men-
41 tioned, the 7th of June, 1957. This therefore shows the state of the law as of the end of 1957.

Mr. Kayser: I offer Plaintiff's Exhibit 67 in evidence.

The Court: It may be received.

(The said document so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT NO. 67.)

Mr. Kayser: Now, your Honor, for the purpose of putting, I think, most quickly before you the outline of our proof, I would like to read from a couple of sections of this Act.

I am reading first Section 50 which states:

"The Governor General may by regulation prohibit the importation of goods into Australia."

Subsection 2 of Section 50:

"The power conferred by the last preceding subsection may be exercised;

"(a) By prohibiting the importation of goods absolutely;

42 "(b) By prohibiting the importation of goods from a specified place; or

"(c) By prohibiting the importation of goods unless specified conditions or restrictions are complied with.

"Subsection 3: Without limiting the generality of Paragraph (c) of the last preceding subsection, the regulations (a) may provide that the importation of the

goods is prohibited unless a license or permission to import as been granted as prescribed by the regulations; (b) may provide that a license or permission so granted may be subject to conditions or requirements to be complied with by the person to whom the license or permission was granted, either before or after the importation of the goods in respect of which the license or permission has been so granted; and (c) may provide that the grant or continuance in force of a license or permission so granted shall be subject to the
43 condition that the applicant for or the holder of the license or permission furnishes to the Customs authority for compliance with this Act and for compliance with the conditions or permission to which the license or permission is granted."

44 Section 51 reads:

"Goods the importation of which is prohibited under the last preceding section are prohibited imports."

Now, I want to read just the first part of Section 270.

"The Governor General may make regulations not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or as may be necessary or convenient to be prescribed for giving effect of this Act or for the conduct of any business relating to the customs, and, in particular, for prescribing"—

and then some particular actions which the Governor General may take are referred to, or are listed, rather.

By Mr. Kayser:

Q. Now, Mr. Ewens, I will hand you again Plaintiff's Exhibit 67 and ask you whether or not Sections 50, 51 and 270 of the Customs Act of 1901-1957 have been in full
45 force and effect from and after December 14, 1956, through to the end of the year 1960?

A. Yes, that is so.

Q. Sir?

A. Yes, that is so.

Q. I note, incidentally, that some of the sections are shown to have been adopted in 1952, but as not becoming effective until December 14, 1956.

Do you know the explanation of that?

A. It is as a fact that they did not come into operation until the 14th of December, 1956, but I don't know the reason for the delay in bringing them into operation.

Q. I hand the witness Statutory Rules, 1939, No. 163, which have been duly attested, certified, and marked as Plaintiff's Exhibit 68 for identification.

I will ask him whether or not these are statutory rules made pursuant to the Customs Act of the Commonwealth.

A. Yes, these are statutory rules entitled,

"Customs Import Licensing Regulations Made Under the Customs Act of 1901 to 1936."

Q. Mr. Ewens, can you state whether or not these 46 rules continued in force and effect until the 14th of December, 1965?

A. Yes, they did.

Mr. Kayser: I will offer Plaintiff's Exhibit 68 in evidence.

The Court: It may be received.

(The said documents, so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT 68.)

By Mr. Kayser:

Q. I will hand these back to the witness, the statutory rules just referred to. Referring to Regulations 3 and 15, I ask him in his expert opinion to state the effect of the provisions of those two regulations.

Mr. McConnell: I object to his testifying to the effect of these rules and regulations. He is incompetent to so testify.

The Court: I mean, don't the rules themselves indicate, without an opinion—Do you want him to put a unique meaning on them? I don't even know what the rules
47 say. Don't they speak for themselves?

Mr. McConnell: I want to call the court's attention to the opinion of Mr. Chief Justice Latham of the High Court in Australia, in which an attempt was made to interpret or construe plain words of a statute, and he lays down this rule which I understand to be the law in Australia, and it certainly is the law here, in which he says:

"The words of a statute, when applied to the state of facts with which the statute deals, speak for themselves. They express the intention of the Parliament. A statute may be based upon the report of a committee, or of many committees, or upon cabinet memorandum, upon a resolution of a political party, or upon an article in a newspaper. The intention of Parliament as expressed in a statute cannot be modified or controlled in a court by reference to any such material."

Then it goes on—

48 The Court: I don't think he is about to go to any material that was used in the debate on the adoption of this.

Mr. McConnell: No, but it also goes on here and says you can't do it by other testimony either.

The Court: Isn't the statute self-explanatory, Mr. Kayser, or is there something confusing about it?

Mr. Kayser: Your Honor, I would like to address myself, if I may, for a moment, on this subject of testimony of experts as to foreign law.

Now, I think that we must remember that what we have here is a matter of foreign law, the law of Australia not being interpreted here in the United States. And I have prepared, your Honor, and would like to hand to the Court a short memorandum which shows that authorities

show clearly that the opinions of foreign experts—of
49 experts on foreign law should be looked to not only if there is a question—an ambiguity, but also to aid in the interpretation. As Wigmore said, for example, the answer has always—

The Court: I mean, is this law so involved that I need an expert's interpretation?

Mr. Kayser: Your Honor, I think it would be of great assistance, frankly.

The Court: I mean, I don't know, It may just say televisions and radios are banned from the country. I don't need any interpretation of that.

Mr. Kayser: No, your Honor, I think it would be of a great assistance and aid to this court if the witness is permitted to state the effect of these sections, rather than having this court being required to wade through all this language with the paragraph and subparagraphs, and with the unfamiliarity which we have with the Australian legislation.

The Court: How long and how involved is this
50 thing, Mr. Kayser, that you are asking his interpretation on?

Mr. Kayser: Your Honor, possibly if we could just hand it to the Court, and he can decide for himself whether or not a brief explanation might be an aid.

The Court: I mean, does the question that you asked this witness require the reading of this entire document that you are about to hand me, or is he just going to refer to certain paragraphs?

Mr. Kayser: Well, he will refer to certain paragraphs in the light of his over-all knowledge of the statute and the subject matter, your Honor.

Mr. McConnell: Well, may I be heard for a moment on this, your Honor?

The Court: Yes.

Mr. McConnell: I want to cite the case of *Groome* v. *Freyn Engineering Co.*, 374 Ill. 113, at Page 124. The question there was a proof of law in Russia, and the Supreme Court of Illinois dealt with it; and says:

51 "Where the laws of a foreign country are involved, they must be proved as any other fact. If they are written laws, the best evidence is a copy of the Constition or the Statute under consideration," citing a number of Illinois cases.

"If the foreign law is established by court rulings or otherwise, they may be proved by a person having expert kowledge of such law, and he may properly refer to the decisions or precedents which declare it. Measured by these rules the evidence is wholly insufficient to establish as a fact any law of Russia which would render the performance of the contract under consideration void. It appears from the record that Russia has a written constitution, and a written civil and criminal code which have been in effect in and after 1923. The text of such written laws is not in the record."

Then they go on holding other evidence is incom-
52 petent. Now, this is a very simple question which we have. We have some regulations and we can't import without getting an import license. It's just as simple as that.

But the question in this case is whether or not, in view of those statutes, goods came in in commercial quantities.

That is the only issue, as I see it, in this case.

53 We are prepared to stipulate that there were regulations, that there was an Act, and this witness can't add anything to the Act. Your Honor is not going to take his statement of what the Act is against the document itself.

The Court: You are stipulating to one of the ultimate facts here, that there was a regulation—

Mr. McConnell: Yes, no question about that.

The Court: Is that all you are seeking to prove by this witness, that there was a regulation?

Mr. Kayser: We are seeking to prove the statute and the regulations and the terms of them.

Your Honor, we can't—

Mr. McConnell: The terms are in the document.

Mr. Kayser: I would suggest, your Honor, that the witness be allowed to answer the question, I mean, as an offer of proof, if nothing else. But actually, as the
54 authorities indicate, the testimony of an expert is proper not only in case of ambiguity, but as an aid in interpreting.

Mr. McConnell: Your Honor, we have it right here in black and white what the regulation is. This witness can't change it. There is no ambiguity in it. Anybody can read this and see exactly what it says.

Mr. Kayser: The witness can state the effect of it.

Mr. McConnell: No, he hasn't anything to do with the effect of it. He was never in the Customs. He never was anywhere near—

Mr. Kayser: He can state the effect of the regulations. After all, this man is parliamentary draftsman, and has been drafting legislation in Australia for a couple of decades.

The Court: I assume he can testify as to what the law is. If the law was being violated by stuff coming
55 through customs, he wasn't—

Mr. Kayser: That is right, your Honor.

But first, as part of our proof, we have to establish what the law is.

The Court: Well, as I understand it—

Mr. McConnell: No quarrel about it.

The Court: Mr. McConnell is willing to stipulate as to what the law is, or was, or both.

Mr. McConnell: Exactly. We have no quarrel about what the law is. What happened under it is this lawsuit.

The Court: I would think that you would have a tighter case if you could get a stipulation from him. Then he couldn't subsequently object to the introduction of these, 64, 65, 66, 67, and 68, because you have the ultimate facts stipulated to by Mr. McConnell.

56 Mr. McConnell: Well, I guess the shortest way, your Honor, is to let him go ahead. I don't know.

The Court: Well, if this is the way he wants to try his case, I am not going to stop him.

Mr. Kayser: Your Honor, we could have been on much farther during the time that we have been—

The Court: Well, because a lawyer makes an objection, that is not the kind of delay that in my opinion merits any—

Mr. Kayser: I agree, sir.

The Court: All right, go ahead, with this witness.

Mr. Kayser: I believe we had a question pending.

The Court: Well, it is a long way back. Can you think of what it was and ask it again?

Mr. Kayser: All right.

Mr. McConnell: Well, I object to the question. He asked him what the effect of it was and I object to it

57 because the man hasn't been shown to have any knowledge at all of what happened under this law. He wasn't anywhere near the import licensing bureau and he had nothing to do with it.

The Court: I will sustain an objection to form of that question.

Ask him what this purports to do. Whether it does it or not is something that he may have no knowledge of, but what is it supposed to do.

Mr. Kayser: All right.

By Mr. Kayser:

Q. Mr. Ewens, will you state what regulations 3 and 15 of those statutory rules purport to do.

A. They purport to place in the control of the Minister of State for trade and customs the importation of goods into Australia by a system of what might be called import licensing.

Q. I will hand the witness a document, Statutory Rules 1956, No. 93, which has been duly attested and certified and marked as Plaintiff's Exhibit 69 for identification, and I will ask him whether or not these are statutory rules
58 made pursuant to the Commonwealth Customs Act as amended.

A. Yes, they are.

Mr. Kayser: I offer Plaintiff's Exhibit—

The Court: 69?

Mr. Kayser: 69 in evidence.

The Court: It may be received.

(The said document, so offered and received in evidence, was marked as PLAINTIFF'S EXHIBIT 69.)

Mr. Kayser: I would like to call the Court's attention —I think it might be helpful if we were to read 7 and 17 into the record, your Honor.

The Court: Well, if you think it would be helpful, you go right ahead.

Mr. Kayser: Thank you.

"7. The importation of any goods (not being goods which are excepted from the application of these regulations) is prohibited unless, (a) a license under these regulations to import the goods is in force and, (b) the conditions and restrictions (if any)
59 to which the license is subject are complied with.

"17. () The Minister may except from the application of these registrations any goods or any goods included in a class of goods; (2) Without limiting the

generality of the last preceding subregulation, the exception of any goods from the application of these regulations may be limited to, (a) goods produced or manufactured in a country or countries specified by the Minister; (b) goods to be imported in a manner or at or within a time specified by the Minister; or (c) goods to be used for a purpose specified by the Minister.

"(3). The Minister may vary or revoke any exception made in pursuance to this regulation."

By Mr. Kayser:

Q. I notice, Mr. Ewens, that there is a reference on the first page of this exhibit to the Minister of State for Customs and Excise; can you state whether or not that
60 is the minister administering these regulations?

A. Yes, he was the Minister administering these regulations. He is the Minister referred to in the regulations.

61 Q. Can you state whether or not the provisions of these 1956 statutory rules, Plaintiff's Exhibit 69, have been in force and effect from December 14, 1956, until the end of 1960?

A. Yes, that is so.

Q. Now, directing your attention to Regulation 7, where reference is made to licenses under the regulations, who had the power to issue licenses?

A. The power to issue licenses under the regulations is vested in the minister or in a licensing officer, that is to say, an officer authorized by the minister to act as a licensing officer for the purposes of the regulations.

Q. Under Australian law, can one minister of the government act for another minister?

A. Yes.

Q. Now under Section, or Regulation 6, there is ref-

erence to the delegation by the minister of his powers to a licensing—powers or functions to a—strike that.

There is reference to the delegation of a power of function by the minister; can you state whether that power could be delegated to an officer or officers in a department
62 other than customs and excise?

A. Yes, it could be delegated to any officer of the Commonwealth of Australia regardless of the department in which he worked.

The Court: Maybe, Mr. Kayser, we will take a five-minute recess.

Mr. Kayser: Yes, sir.

(Thereupon a short recess was had herein, after which the following further proceedings were had, to-wit:)

The Court: You may proceed.

Mr. Kayser: Thank you.

Your Honor, the next subject on which I propose to examine this witness has to do with the matter of customs, duties and legislation, but the fact is that I believe with the exception of one exhibit these acts also have a bearing on the application of the import restrictions but with your Honor's permission I will also, in connection with those exhibits, ask him pertinent questions relative
63 to the duties themselves.

Mr. McConnell: Well, I object to that. That is not in the scope of this inquiry.

The Court: Well, I indicated that while it is beyond the major purpose of this inquiry, rather than in the event of a ruling one way or the other bring him back for an inquiry in regard to this, since I have some assurance that this would not take very long, that I would not take very long, that I would save him another possible trip back.

Mr. Kayser: Yes.

Well, this whole next section we would largely have to go into in any event in relation to import restrictions.

The Court: All right.

The objection is overruled.

By Mr. Kayser:

Q. Mr. Ewens, does the Government of Australia impose tariffs on the importation of goods from other countries?

A. Yes, tariffs are imposed by statute.

Q. Are you familiar with the statutes in relation to such tariffs?

A. Yes, I am generally familiar with them.

64 Q. Where is such legislation drafted?

A. The legislation is drafted in the Parliamentary Drafting Division, the division that I control?

Mr. McConnell: Well, I object to the process of drafting customs. There must be an act. If there is an act, I haven't any objection to the competency. He doesn't have to prove that it was drafted or that he did it.

By Mr. Kayser:

Q. I hand you a document, Customs Tariff, 1953-1958, which has been duly attested and certified and marked as Plaintiff's Exhibit 70 for identification—Mr. Thomas said that I misspoke—Customs Tariff, 1933 to 1958.

65 By Mr. Kayser:

Q. I will ask as of what date does this Act show the Customs Tariff of Australia?

A. This Act covered by this attestation shows the Customs Tariff as at 18th June 1958.

Q. June 18th?

A. June 18, 1958.

Mr. Kayser: I offer Plaintiff's Exhibit 70 in evidence.

Mr. McConnell: I object to its relevance.

The Court: Am I to assume that unless there has been an amendment or change or repeal that it was in effect in June of '59 also?

66 The Witness: It continues in force, your Honor, until some amendment is made to it.

The Court: And that was my assumption.

The Witness: Yes, sir.

The Court: And so that until there was an amendment —well, do you know whether there was an amendment after June of '58?

The Witness: Oh, yes, there have been amendments. This is the beginning date of its operation.

The Court: All right. It may be received.

(The said document, so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT NO. 70.)

By Mr. Kayser:

Q. Now, first, directing your attention to Section 6, what does this section purport to do?

A. Section 6 is the section that imposes duties of customs in accordance with the schedule to the Act upon the goods described in items in the schedule.

67 Q. Directing your attention, then, to Page 96 of that schedule, can you state for the record what Tariff Item 180(e) covers?

Mr. McConnell: It states it right in the document. I object to this.

The Court: Overruled.

By the Witness:

A. Tariff Item 180(e) covers generally wireless receivers, parts thereof and accessories therefor as shown in paragraphs of the sub-item.

By Mr. Kayser:

Q. Can you state whether or not 180(e) includes radio receivers or television receivers?

A. Yes, it includes both of those.

68 Q. What is the designation which you find to cover them?

A. Paragraph 15 refers to wireless receiving sets wholly assembled, partly unassembled, excluding cabinets, cathode ray tubes, that is to say picture tubes, valves, loud speakers, headphones, batteries or any device for eliminating batteries.

Q. In other words, the term "wireless receiver" includes radio receivers and television receivers?

A. Yes, that is right.

Q. Now, were the provisions of Section 6 of the Act and 180(e) of the schedule in full force and effect during the period from June, 1958, until May 20, 1960?

A. Yes.

Q. Now, is there a method of determining the amount of duty imposed on a given item under the tariff schedules?

A. Yes, you first identify the goods with which you are dealing by reference to the item that describes them and then you read off the duty applicable to them from one or other of the three columns that form part of the schedule.

Q. Referring you back to 180(e) on page 96, what 69 is the meaning of the term "ad val" which appears there?

By the Witness:

A. The phrase "ad val" is an abbreviation of two Latin words, "ad valorem."

By Mr. Kayser:

Q. That has to do with the valuation of goods for duty purposes?

A. It means according to value, in English.

Q. Are you familiar in a general way with the method of valuation of goods under Australian tariff?

A. I am familiar with the provisions of the statute relating to this.

Q. I hand to you Exhibit 67, which is a 1901-1957
70 Customs Act already in evidence, and I direct your attention to Section 154 and ask you if you can state what that section provides in connection with the application of the ad valorem duty.

A. This section applies when duty is imposed according to value, that is, when duty is applied ad valorem, or ad val, as it states it, and the section goes on to provide that the values for duty is the sum of two elements, the first of those elements is the actual money price paid or to be paid for the goods by the Australian importer plus any special deductions, or the current domestic value of the goods, whichever is the higher; and the second element is all charges payable or ordinarily payable for placing the goods free on board at the port of export.

71 Q. Now, as an illustration of how these tariff schedules are applied, I would like to direct your attention to Item 180(e)(8) of Exhibit—of the Tariff Act, Exhibit 70, and ask you to first indicate what the item is—or what the goods are shown at that item.

A. That Paragraph (8) applies to goods described as "combined power transformers and chokes, and any device for eliminating AB, BC, or ABC batteries such as power packs and similar devices, whether imported separately or incorporated in a wireless receiving set."

Q. Now, looking at that schedule, will you state what the duty is applied to that item.

A. The duty applied to the goods I have just mentioned is, under the British preferential tariff, 15 schillings each; under the intermediate tariff, 25 schillings each; and

under the general tariff 26 schillings and sixpence each, subject to a qualification that I am about to state, and that is that if the duty calculated ad valorem at the rates menioned is higher, then the ad valorem duty applies.

The ad valorum duty rates are under the British
72 preferential tariff 27½ per cent, under the intermediate tariff 45 per cent, and under the general tariff 50 per cent.

Q. I gather then that the small letter "s" means schillings, and that the small letter "d" means pence, is that right?

A. Yes, that is right.

Q. Could you state how many penee in a schilling and how many schilling in a pound?

A. Twelve pence is a schilling and 20 schillings in a pound.

Q. And can you state what the approximate rate of exchange has been as between the Australian pound and the U. S. dollar since about 1956?

A. 2.24 United States dollars to the Australian pound.

Q. You mean $2.24?

A. Yes, $2.24.

Q. Per Australian pound?

A. Per Australian pound.

Q. Incidentally, I notice in here on some of these schedules a figure which looks like a capital "L" with a line drawn through it; I ask you, is that the indication of the pound?

73 A. That is the indication of the pound.

By Mr. Kayser:

Q. Calling your attention to the heading on the schedule, the heading "British Preferential Tariff," can you state whether or not the British Preferential Tariff is normally higher, lower or equal to the other tariffs?

A. Well, it is a preferential tariff and it would—I can't conceive of any circumstances in which it would be higher than the other two tariffs. It would be at least less or perhaps equal to them.

Q. To what areas of the world or what countries does Australia apply the British preferential tariff?

74 A. The countries to which the British preferential tariff applies are provided by statute, and what the statute provides is that they apply to imports from the United Kingdom and also to imports from British non-self-governing colonies.

By Mr. Kaiser:

Q. But the United States is not included under the British preferential tariff?

A. The United States is not included in the description that I have just given of the countries to which that tariff applies.

Q. How is it determined whether the general or intermediate tariff applies? I am referring to the other two columns in the schedule.

A. The position is that the general tariff applies to all goods that are not subject to the British preferential tariff, and this, again, is a matter provided by statute
75 unless some administrative order or instrument is in force applying the intermediate tariff.

Q. I hand the witness a Commonwealth of Australia Act Customs Tariff No. 3, No. 52 of 1960, which has been duly attested and certified and marked as Plaintiff's Exhibit 71 for identification, and I will ask the witness whether or not this is an amendment to the 1933-1958 Customs Tariff Act about which he has previously testified.

A. Yes, it is an act that amends the Customs Tariff, although there had been intermediate amendments between the previous document and this document.

Mr. Kayser: I will offer Plaintiff's Exhibit 71 in evidence.

The Court: It may be received.

(The said document, so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT NO. 71.)

Mr. McConnell: I object to it as not being within the issues here. If it is offered on the other issue, if we ever get to it, I haven't any objection.

The Court: Well, it will be received for the other issue. I don't think it is relevant to this one.

Mr. Kayser: Your Honor, some of these statutes are also relevant here in relation to these schedules. Identification purposes—

The Court: It will be your duty, then, at the conclusion of the evidence to point out why.

Mr. Kayser: Well, this act—not this act, the preceding acts have had to do with both, because the matter of the schedule, the tariff schedule, is used also to identify goods for import duty, or import restriction application. So that there is a dual relevancy.

The Court: I assume that if there is a tariff on something coming into the country, that means it can come in if they pay the tariff.

Mr. Kayser: Not necessarily, your Honor, no.

The Court: You can develop that for me then.

Mr. Kayser: Your Honor, as we have pointed out, these regulations—the power of the Government has involved complete restriction, prohibition, or it has allowed prohibition from particular countries or areas, or has permitted conditional imports. In other words, there are a great variety of regulations depending on the goods. The goods might be admissible from one country, and those same goods might not be admissible from another.

The Court: I understand.

Mr. McConnell: If the Court please, the difficulty

with this situation is we have a limited issue which counsel has told your Honor time and time again he's going to prove an embargo. Now, he's getting intertwined into that issue questions of tariffs, to which I have a perfectly good answer, too, if we ever get to that issue.

My objection is that entering it into this issue, it creates a situation where I cannot meet that sort of evidence. It has no relevance whatever on whether or not there is an embargo, or anything approaching an embargo.

I have no objection if he wants to hold it in reserve until your Honor rules on whether or not we are going to go to that issue, at which time I would have a chance to meet it. But going into this record, it puts me in a very awkward position.

The Court: All we are doing is trying to save some-
79 body that came from a long ways off from coming back, if we can get it in while he is here.

You may proceed, Mr. Kayser.

By Mr. Kayser:

Q. Directing your attention to Page 17 of Plaintiff's Exhibit 71, will you please tell the Court what this provides relative to tariff Item 80(e)?

A. 180(e).

Q. 180(e), I'm sorry.

A. It provides in relation to Paragraph 180(e) for its omission.

Q. And that omission was as of what date? I call your attention to Section 3, Subsection 2 of the Act itself.

A. Yes. The effective date of the omission of the provision referred to in the last question was 20 May 1960.

80 Q. All right.

Now, I call you attention to Item 180(e) and ask whether that has to do with wireless receivers.

A. Yes, it does.

Q. Now, calling your attention specifically to 181(e)(1), what does that cover?

A. 181(e)(1) is expressed to apply to radio broadcast receivers with or without sound recorders—

Q. Yes. Well, it isn't neces[illegible]o do more than identify the type of goods.

What about 181(e)(2)?

A. That applies to television receivers, but not including cathode ray tubes; that is, picture tubes.

Q. What is the effective date of those classifications 181(e)(1) and -(2)?

A. They are the same date as the omission of 180(e); that is, 20th of May, 1960.

Q. All right.

Referring to Item 181, about seven lines down there is the statement:

"By omitting Paragraphs 2 and 3 of Sub-Item (a)."

What is the effect of that sentence?

81 A. The effect of that is to—that those provisions would cease to apply to those, the goods that were previously covered by those paragraphs.

Q. You don't—obviously you can't recall what they were.

Mr. Kayser: If I may, I will state for the record that had to do with cathode ray tubes—

Mr. McConnell: Wait a minute. I will object to your testimony here.

Mr. Kayser: All right. The item will speak for itself in this case.

By Mr. Kayser:

Q. Now, I call your attention to Item 181(j) on page 20, and ask what that covers.

A. Well, that covered a number of goods described in the item; in particular, cathode ray picture tubes as used

in television receivers, whether imported separately or otherwise.

Q. I would like to direct your attention to the Items (a) (2) and (3) of Item 181 on Plaintiff's Exhibit 70, so that the record is complete, and state what those two paragraphs cover.

A. 181(a)(2) covered valves for wireless telegraphy and telephony, including rectifying tubes, and (3) cov-
82 ered cathode ray tubes—that is, picture tubes—as used in television receiving sets, whether imported separately or otherwise.

Q. Now, going back again to Plaintiff's Exhibit 71, page 20, Item 181(j), as a further illustration of interpretation of these schedules, will you state what the duty was as shown there for cathode ray picture tubes?

A. Yes, the duty under the British preferential tariff was 11 pounds. Under the intermediate tariff it was 11 pounds plus 10 per cent ad valorem, and under the general tariff it was the same, 11 pounds each plus 10 per cent ad valorem.

Q. Do you know, did this duty applicable to cathode ray tubes continue until October 21, 1960?

Well, we better show you the next Act and ask you then. I would like to—

A. It's in the same Act.

83 Q. Well, then, can you answer the question?

A. Yes. The duty I've referred to on the goods I've referred to continued from the date I've referred to, and until it was changed with the effect from the 21st day of October, 1960.

Q. All right. Now, as concerns the duty on radio and television, if you will go to Page 18 of Plaintiff's Exhibit 71, (e)(1), will you state what the duty was on radio broadcast receivers.

A. The duty on radio broadcast receivers was five

pounds in each case, plus in the case of the British Preferential Tariff an ad valoum duty of 27½ per cent. And in the case of the intermediate and general tariff, plus an ad valorum duty of 45 per cent.

Q. Can you state whether or not these customs duties on radio sets continued in effect until June 1, 1963?

A. Yes, they did.

Q. Now, turning the page, the duties are stated there, are they not, under 181(e)(2) as to television receivers?

A. Television receivers excluding the cathode ray or picture tubes.

84 Q. Yes. All right. Can you state whether or not these duties remained in effect until June 1, 1963?

A. Yes, they did so.

Q. Now, can you state whether or not the customs duties on cathode ray picture tubes shown in this exhibit continued until June 1, 1963?

A. Well, there are two duties. First of all, the one that applied from May until October. That, of course, continued only until October. But the duties that were applied as from October continued until the date in 1963 mentioned in the question.

Q. In addition to the customs tariff concerning which you have been testifying, is there any additional legislation in Australia, or has there been, which imposed duties generally on goods imported into the country?

A. Yes, there are. There are other statutes imposing duties of customs known as primage duties of customs.

Q. I will hand the witness a copy of the Customs Tariff Primage Duties Act of 1934-1958, duly attested and certified, and marked as Plaintiff's Exhibit 72 for identi-

85 fication, and ask him if this is an act which imposes primage duties as you have described them?

A. This is an act that imposes primage duties of customs.

Q. This Act was effective—the compilation you have there was effective as of what date?

A. The beginning date of this is 18 June 1958.

Mr. Kayser: I offer that exhibit in evidence.

The Court: It may be received.

(The said document, so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT NO. 72.)

* * * * *

90 By Mr. Kayser:

Q. I hand the witness a document which has been marked as Plaintiff's Exhibit 73-A, -B and -C, or more strictly, there are three pamphlets which have been
91 bound together, duly attested and certified.

The first pamphlet has to do with nine sales tax assessment acts, the second has to do with nine sales tax acts, 1930-1950, and the third, 73-C, has to do with nine sales tax acts or reprints, 1930-1962.

Rather than to read all of the titles into the record, I will ask the reporter to copy them in.

Mr. Kayser: I will offer this Exhibit 73-A, -B and -C in evidence.

Mr. McConnel: I object to it as not in any issue now open for trial.

The Court: The record will show that these are received solely in regard to an issue that we may at some time reach, but are not considering today, and they will be received for that purpose and that purpose alone, limited to that purpose.

(The said document, so offered and received in evidence, were marked PLAINTIFF'S EXHIBITS 73-A, -B and -C, inclusive.)

92 By Mr. Kayser:

Q. Now, is it correct, Mr. Ewens, that 73-B shows the nine sales tax assessment acts 1 to 9 brought up to one

date, and that 73-C shows them brought up to the 1962 date?

A. Yes, but they are not assessment acts. They are a sales tax act.

Q. They are a sales tax act?

A. Yes.

Q. And is it correct that the sales tax acts 5, 6, 7 and 8, all have to do with the imposition of sales tax on the sales value of imported goods?

A. Yes, on the sale value of imported goods. The text was a text on sales value.

Mr. McConnel: What kind of value?

The Witness: Sale value.

The Court: Sale value, sale.

Mr. Kayser: S-a-l-e.

By Mr. Kayser:

Q. And it correct that the assessment acts have to do with the collection of taxes under the Sales Tax Acts bearing the same numbers?

A. Yes, that is so. That is to say, the sales tax assessment act No. 5 deals with the imposition assess-
93 ment and collection under Sales Tax Act No. 5, and so on with 6, 7 and 8.

Q. Yes. Now, I want to call your attention to Section 11 of Sales Tax Assessment Act No. 1, which is in 73-A.

I will ask you, under that section who was required to register under that act?

A. The persons who were required to register under the Act are manufacturers and wholesalers.

Q. And was a retailer required to register?

A. No, a retailer was not required to register.

Q. And he was referred to as an unregistered person?

A. Anybody who was not registered is referred to in the statute as an unregistered person and, therefore, that would include retailers.

Q. All right. I will call your attention to, as an illustration, to Sales Tax Assessment Act No. 5 in 73-C, Page —it's in Exhibit 73, the third one.

A. That is the Sales Tax Act, not an assessment act.

Q. I'm sorry. I mean Sales Tax Act.

A. Yes.

94 The Court: Now, are you talking about 73-A or 73-C? I'm confused.

By Mr. Kayser:

Q. Yes. I call your attention to the Sales Tax Assessment Act which is 73-A, Exhibit 73-A, Page 64, and ask what the value of an item is for sales tax purposes where it is imported by an unregistered person or a registered person who has not quoted his certificate of registration on the customs entry?

A. The value is 120 per cent of the sum of two elements. The first element is the value for duty of those goods in terms of Australian currency, and the second element is the duty of customs payable in respect of the goods.

Q. Now, in what part of Sales Tax Assessment Act No. 1 is that Section 11 contained, or rather Section 11? I haven't even asked you about it.

In what part of the act is Section 11 contained, of Sales Tax Assessment Act No. 1?

A. Section 11 of Sales Tax Assessment Act No. 1 is contained in Part III of the Act.

95 Q. Now, calling your attention to Section 12 of the Sales Tax Assessment Act No. 5, will you state the effect—that is page 68, I am sorry—will you state the effect of that Section 12 in relation to Part 3 of the Sales Tax Assessment Act No. 1.

A. Yes. The effect of Section 12 of the Sales Tax Assessment Act No. 5 is to apply, among other provisions,

Part 3 of the Sales Tax Assessment Act No. 1 to goods that are dealt with under Sales Tax Assessment Act No. 5.

Q. And is the same thing true as concerns Section 12 of Sales Tax Assessment Acts Nos. 6, 7, and 8?

A. Let me just look at these.

Yes, the same provision is made by Section 12 of Acts 6, 7 and 8.

Q. Now, were the provisions that we have just discussed here of Sales Tax Assessment Act No. 1 and Sales Tax Assessment Acts No. 5, 6, 7 and 8; did they remain in full force and effect from January, '58 to June 1, 1963?

A. You are referring to the assessment acts?

Q. Yes.

A. Yes, that is right.

96 Q. I hand the witness a group of sales tax acts which have been duly attested and certified, which have been marked as Plaintiff's Exhibits 74-A through -K for identification, and ask whether or not these documents have to do with the classification of goods for sales tax purposes.

A. Only the first Act in that group, Mr. Kayser. That would be 74-A.

Q. What about the others?

A. The others have no direct application to the classification, they are the Acts that impose the sales tax.

Mr. Kayser: I offer Plaintiff's Exhibits 74-A through -K in evidence.

Mr. McConnell: Same objection. It is outside the scope of any issue.

The Court: They may be received, not on the embargo issue but for some possible issue that may arise sometime in the future.

(Said documents, so offered and received in evidence, were marked as PLAINTIFF'S EXHIBITS 74-A through -K, inclusive.)

98 (Caption—No. 59-C-1847)

Before the Hon. Richard B. Austin,
Friday, October 15, 1965,
2:00 o'clock, p.m.

The hearing was resumed pursuant to recess.

99 By Mr. Kayser:

Q. I will hand the witness a copy of the Sales Tax Exemptions and Classifications Act, 1935-1963, which has been duly attested and certified, and has been marked as Plaintiff's Exhibit 75 for identification, and ask him whether or not that is a 1963 compilation or reprint of the Sales Tax Exemptions and Classifications Act.

A. This is in force from 14 August 1963.

Mr. Kayser: I offer Plaintiff's Exhibit 75 in evi-
100 dence.

The Court: It may be received on this issue that we are really not trying.

(The said document, so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT NO. 75.)

By Mr. Kayser:

Q. Mr. Ewens, based on the relevant sales tax legislation which has been received in evidence, can you state a sales tax under Sales Tax Acts 5 and 6 on radio sets and television sets, excluding the picture tube in the latter case, in effect during the period from May 22, 1959, to June 1, 1963?

A. Yes, it was 25 per cent.

Q. Twenty-five per cent of sales value?

A. Sales value.

The Court: Ad valorum?

The Witness: Yes.

The Court: All right.

By Mr. Kayser:

Q. And did the same rate apply for the same goods for the same period of time under Sales Tax Acts 7 and 8?

101 A. Yes.

141 Mr. Kayser: Your Honor, at this point we would like to read into the record portions of the depositions of Mr. Bernard Francis Meere, taken at Canberra on September 28, 1965, and I will ask that Mr. Thomas, who took the deposition, read the questions, and Mr. Cook to act as the witness.

Mr. Thomas: (Reading.)

"Q. Would you please state your name and address.

"A. Bernard Francis Meere, 15 Babbage Crescent, Griffith, A. C. T.

"Q. By whom are you employed?

"A. The Comonwealth of Australia and the Department of Trade and Industry.

142 "Q. What position do you hold in the Department of Trade and Industry?

"A. Assistant Secretary, Imports Branch.

"Q. Would you please explain for the record where in the organization or hierarchy of the Department of Trade that position is located.

"A. The department is headed by its Secretary. There are two deputy secretaries and a number of first assistant secretaries, one of whom is the first assistant secretary, Tariff and Imports Division, who is my immediate superior."

146 "Q. In the course of your duties with the Australian Government, have you become familiar with the policy of that government with respect to imports generally?"

* * * * *

"Q. Would the witness like the question repeated?

"A. No, thank you, I recall the question. The answer is yes.

"Q. What was the policy of the Australian Government with respect to imports prior to the year 1960?"

* * * * *

147 "A. Briefly, the policy of the Australian Government in relation to import licens—prior to 1960 was that imports should be restricted by means of licensing to levels determined by the government from time to time in the light of the Australian balance of payment situation.

"Q. How was that policy applied to the dollar area?

"A. The essential purpose of the policy, as I said, was to restrict imports. Therefore, there were general criteria that the goods had to be essentially in terms of the economy and not available from production in Australia. In terms of the dollar area, there was a further criterion that the goods should not me available from non-dollar sources of supply.

* * * * *

"Q. How was this policy which you have described, applied to the importation into Australia of wireless receivers and television receivers from the dollar area prior to 1st August 1959?"

* * * * *

"A. The licensing treatment of wireless receivers and television receivers prior to 1st August 1959, as

shown in the schedule of categories which was the listing of licensing treatment at the time, was subject to administrative control which as I have said, meant that applications were dealt with on a case-by-case basis in accordance with the criteria I have already spoken of.

"Q. On that basis, were licenses actually issued for the importation of wireless receivers or television receivers from the dollar area?"

• • • • • •

"A. I have no personal knowledge of the issue of these licenses, but I do know from records available
152 to me that licenses were issued for the importation of wireless receivers and television receivers.
153 "Q. Generally, to whom were such licenses issued?

"A. I take it that the question, 'To whom were these issued?' means to what class of applicants. These licenses were issued to manufacturers of wireless receiving and television receiving sets in Australia for use as models or prototypes in their manufacturing business.

• • • • • •

157 Mr. Thomas: (Reading.)

"Q. I will ask you, Mr. Meere, what are the tariff item numbers for wireless receivers and television receivers, under which these statistics are listed?

"A. The tariff item numbers for wireless receivers and television receivers were 180E(15) until May 1960, and 181E(1) and 181E(2) subsequent to that date.

"Q. Were wireless receivers and television receivers for home use classified under any other tariff item numbers at any time during the period 1959 through 1963?

"A. Not to the best of my knowledge.

• • • • • •

170 "Q. So, was it from and after February, 1960, all import licensing controls were abandoned with respect to the importation of complete television sets, radio sets and components therefor from the dollar area?

"A. Yes.

• • • • • •

177 Mr. Thomas: Page 38, a document entitled "History of Australia's Import Licensing Measures" was identified as Zenith Exhibit L. In reference to that exhibit, at the bottom of page 40, we have the following question:

"Q. Mr. Meere, calling your attention to page 44 of Zenith Meere Exhibit L for identification, about which you were asked questions in cross-examination, and concerning the 330 items to which Mr. McConnell
178 referred, would you read the preceding sentence that concerns those items?"

Mr. Cook: (Reading.)

"The preceding sentence reads: 'Several important administrative changes were implemented as from 1st April. The most significant was the removal of licensing discrimination against a wide range of dollar goods.'

"Q. Do you know whether or not complete television receivers and wireless receivers were within the group of 330 items from which the licensing discrimination was removed?

"A. Yes, I do. They were not.

• • • • • •

195 "Q. Now, prior to August 1, 1959, the licensing treatment for complete television sets and radios was administered; is that correct?

"A. Yes.

196 "Q. Now, for how long had that been true?

"A. That would have been true from at least some time in 1947. If I may add to that; there were, of course, import restrictions on goods dating from December 1939. They had foreign exchange implications, initially, and then defense implications thereafter, so that there was really no period from December 1939 onwards in which licenses were not required. My concern about the date of which these—in which television receiving sets and wireless receiving sets as the licensing treatment was described as 'administrative' in the schedule, is that I recollect there was some period early after the war where the licensing section actually showed the letters 'N.L.'.

"Q. What did that mean?

"A. 'No License' against a large number of goods from the dollar area.

197 "Q. That would be an absolute prohibition?

"A. Yes.

"Q. An embargo?

"A. Yes.

"Q. No licenses?

"A. No licenses.

"Q. I take it that the licensing treatment with respect to radio receivers and television receivers and components therefor was administered; is that right?

"A. In what period?

"Q. From at least 1947 on.

"A. To the best of my recollection, yes.

214 (Caption—59-C-1847)

Before the Honorable Richard B. Austin,
Monday, October 18, 1965,
10:00 o'clock, a.m.

The hearing was resumed pursuant to adjournment.

219 Mr. Cook: (reading)

"A Statistical Item 5261 is headed Wireless Radio Equipment and lists receiving sets excluding cabinets, valves, loud speakers, headphones, batteries or any other devices for eliminating batteries.

220 "Q. Is that category item complete radio sets or parts?

"A. I would give it as my opinion that that item is complete radio receiving sets.

225 "Q. Now, would the wireless receivers be both TV and radio?

"A. I would think so, on my interpretation.

"Q. This exhibit we are referring to is with respect to imports for the period 1956-57?

"A. Yes.

229 "Q. Mr. Meere, I show you what has been marked as Zenith Deposition Exhibit J for identification, which
230 purports to show imports into Australia for the period 1958 to 1959. Incidentally, do you know what the statistical periods are, when the years begin and when they end?

"A. Yes, it is a year beginning on 1st July and ending on 30th June of the next succeeding year.

"Q. So I take it that this exhibit would cover July 1, 1958, through June 30 of 1959?

"A. Yes.

"Q. Your explanation would be the same as to the other imports statistics exhibits that we have referred to?

"A. Yes.

* * * * * *

240 Mr. Thomas: (reading.)

"Q. Directing your attention to Hazeltine Meere Exhibit No. 1 which you identified in your direct examination, this being imports cleared for home consumption, can you tell us if there is any difference between these statistics and the statistics entitled Imports into Australia, extracts of which were contained in 241 Zenith Meere Exhibits F, G, H and J for identification?

"A. Yes, there is a difference.

"Q. Would you explain for the record what is that difference?

"A. This document, Imports Cleared for Home Consumption is a recording of the imports as, as the document says, they are cleared for home consumption through the customs barrier, and they are recorded in this document by tariff item and statistical item. The other publication to which you referred entitled Imports is a listing of all imports at the time they are made, whether they are cleared through the customs barrier for home consumption or whether they are bonded or warehoused, and the listing is by statistical item number only."

272 CLARENCE EDWARD GAUDRY, called as a witness on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kayser.

Q. What is your name?

A. Clarence Edward Gaudry, G-a-u-d-r-y.

Q. Where do you live?

A. 7 St. Neot Avenue, Potts Point, Sydney, Australia.

Q. Who is your employer?

A. I am employed by the Examiner of Manufacturers of New South Wales, 12 O'Connell Street, Sydney.

Q. And what position do you hold with the Chamber of Manufacturers?

A. Chief officer, tariff and trade department.

Q. Generally, what are your duties?

A. I head up the tariff and trade department, which is concerned with import and export matters as they concern manufacturers.

273 Q. You were in the Australian Navy for a number of years?

A. Yes, between January, 1939, and January, 1951.

Q. What was your last job rating in the Australian Navy?

A. I was a chief wireless instructor.

Q. What was your next job after you left the Navy?

A. When I left the Navy I immediately joined the Department of Trade and Customs, which later became the Department of Customs and Excise.

Q. You mean that is the Department of Trade and Customs of the Commonwealth?

A. Of the Commonwealth Government, yes.

Q. And how long were you in that department?

A. I was in that department from January, 1951 until November, 1956.

Q. Now, during your service with the Department of Trade and Customs, did you have any duties in connection with the importation of television receivers?

A. Yes.

Q. Will you explain.

274 A. In the early days when television was introduced into Australia, there was a problem associated with the classification, tariff classification of television receivers, in terms of an item in the tariff which was originally designed to apply to radio receivers. As an investigation officer I was charged with the responsibility of engaging in discussions with the industry to establish the principles under which these television receivers should be classified within that broad classification.

Q. Who was your employer after you left the Department of Trade and Customs?

A. Still the Commonwealth Government, but I was transferred to the Department of Trade.

Q. When was that?

A. That was in November of 1956.

Q. What was your first job and what were your duties after you went over to the Department of Trade?

A. I was employed as a clerk in B1 subsection. Under the instructions from the section leader in Section B, I was charged with the responsibility of pre-
275 paring budget estimates and the authorizing of licenses for all proponents and materials associated with the introduction of the television industry in Australia.

Q. Now, did you later hold any other position in the Department of Trade?

A. Yes, in April of 1958 I was promoted to the position of Subsection Leader of B1 subsection.

Q. You then in April of 1958 became the subsection leader of the B1 subsection?

A. That is correct.

Q. How long did you hold that position?

A. From April of 1958 until, I would say, March of 1960. That was after import licensing had ceased to exist in Australia except for a few commodities.

• • • • • •

349 Q. Now, I think I asked you, Mr. Gaudry—rather you had stated that it would not have been possible to import a standard U.S.-made television receiver into Australia during this period after August 1, 1959. And I had asked you why not.

A. Well, because American television—the American television system differs from that in existence in Australia. Therefore, those receivers would not in fact conform with the standards laid down by the Broadcasting Control Board.

Q. Can you give a couple of indications of the differences between the Australian and the U. S. system?

• • • • • •

350 Mr. McConnell: We have in the record here also, your Honor, that our people are expert, too, and they make sets for whatever the market is, and they put them on a special assembly line.

The Court: I assume that you are talking about—those sets that were made for the American market would need some adjustments in Australia; is that what you mean?

The Witness: That's right, your Honor, yes.

• • • • • •

Q. Can you give a couple of illustrations.

A. Yes. As Mr. McConnell said, I'm not a technical expert, but the system used in America employs 525 lines in the raster. The Australian system is a 625-line system.

Q. Would you please explain to the Court and to me what a raster is.

351 A. I think I can do that, Mr. Kayser. When you switch on a television receiver and there is no station transmitting on the particular channel to which you are turned—that is to say, under no signal conditions, there appears on the face of the television picture tube a number of lines. These are—this is a frame, and the number—

The Court: Horizontal lines.

352 By the Witness:

A. Horizontal lines. And the number of lines in the frame is the raster on that particular receiver. The channel frequencies allocated in Australia were different from those allocated in the United States, and the intermediate frequency allocation in America was different from that in Australia.

By Mr. Kayser:

Q. Do I understand correctly that what you are saying is that the changes necessary to have a set comply with the Australian standards would, under the requirement, have to have been made before the set was imported?

A. Oh, yes.

354 The Court: By that, do you mean that they no longer had to comply with this standard of, for instance, 625 lines across?

The Witness: No. I meant that no longer did the import licensing branch or the licensing authority have any authority over it. But since this was an infringement 355 of the Australian broadcasting control board's specification, the Postmaster General in Australia—his department, had sets of this type been brought in—he would have taken action in the matter.

The Court: I mean, that regulation was still on?

The Witness: Oh, the Australian broadcasting control board is in existence to this very moment, your Honor.

356 The Court: In regard to the 625 lines, that sort of thing?

The Witness: That's right.

376 Q. Now, you spoke about television. When did television come into Australia?

A. Oh, I think the decision to introduce it was probably in 1956, but I don't—it might have been even earlier. But I think the first—1955, I should say. I don't think the 377 first transmissions occurred until 1956.

Q. Along in November sometime, in 1956?

A. I feel it was towards November. There is a difference between the states. I think Melbourne came on the air before Sydney. I think the Olympic Games had some impact on this.

Q. Well, they didn't have any market in television prior to the time they were broadcasting, did they?

A. Oh, they sold a number of sets before the stations came on the air.

Q. To pick up test patterns?

A. To pick up test patterns.

Q. But you would say the industry in its production of sets didn't have much of a market until they had television broadcasts, wouldn't that be true?

A. Well, I don't think that's true, Mr. McConnell.

Q. You don't think it is?

A. No.

Q. All right. So there was an established market, according to you, in television sets prior to the time there was any television broadcasting?

A. For a short time before the broadcasts started, 378 because I don't think people thought about buying television receivers immediately when the transmission came on. They were prepared for the stations to come on the air and, hence, they had sets in their homes, a number of people.

Q. Yes. Well, how long before television came on would you say that there was a market for television sets in Australia?

A. I would say probably at the earliest the beginning of 1956, probably at the earliest.

Q. January of '56?

A. Well, I couldn't be precise on this, but rather a guess at that.

382 Q. Now, what was the system of broadcasting television in Australia after it came in, in November of 1956?

A. What do you mean by system, Mr. McConnell?

Q. Well, who did the broadcasting? Was it the Government or somebody else?

A. There was a Government station and two private stations in each of the states—in each of the cities, Sydney and Melbourne. Other capital cities came on the air at a later date.

398 Q. Did you know that the Admiral Company of Australia became the second largest seller of television sets in Australia?

A. For a very short time.

Q. What time?

A. I would say prior to the end of 1957.

426 By Mr. McConnell:

Q. I show you two documents marked for identification Zenith Counterclaimant Exhibits 6 and 7 which purport to be issued by the Australian Broadcasting Control Board, and ask you if those are the standards to which you referred.

A. I've never seen these documents before, but, yes—I will answer yes, although I notice there is a difference in the frequency allocated to Channel 10, although both documents are of the same date. Oh, this is amended and
427 reissued August 1961. That makes a difference, yes.

By Mr. McConnell:

Q. So they are—your answer—

A. Yes, they are.

* * * * * *

Q. Are you familiar with the CCIR standards which are used in Europe?

A. No.

Q. You don't know anything about them?

A. No.

Q. Well, you told us yesterday that Zenith sets could not come into Australia because you had 625 lines?

* * * * * *

429 By the Witness:

A. This was one of the reasons, yes.

By Mr. McConnell:

Q. All right. Well, let's stay with that reason for the moment.

Did you know how many lines the Zenith set had?

A. Not the Zenith set in particular.

Q. Well, did you have in mind an American set as distinguished from the Zenith set?

A. Yes, I—my knowledge was that these sets were 525 line receivers.

Q. All right.

Now, picture tubes came in from the United States, didn't they, in commercial quantities while you were there?

A. Yes.

Q. And they were designed, were they not, to give a picture of 525 lines?

A. This is a technical non sequitur, it doesn't follow.

Q. It doesn't follow? I think you are right, but I just want to take one thing at a time.

The tube could broadcast a picture of 625 lines?

430 A. Oh, certainly, yes, yes.

Q. Yes.

• • • • •

The Court: Let me clear this up.

Were all the tubes that were sent in in commercial quantities tubes that would permit broadcasting on 625 lines?

The Witness: Yes, your Honor. The tube is of no consequence in this matter. The tube could be used for 525, 425, 625, didn't matter.

The Court: That clears it up. You have answered my question.

• • • • •

Q. Now, do you know that the change in television sets from 525 lines to 625 lines, all that is necessary is to change one oscillator in the set?

A. Yes, a vertical-horizontal oscillator would need to be changed.

Q. That is a little bit of an item about that big, isn't it?

A. I don't know. I am not a technical specialist. I 431 said that yesterday.

Q. Well, you take one out, you screw one out, and put another one in. That is the way that you make the change, isn't it?

A. I don't know.

Q. And that takes care of 625 lines with that change?

A. Well, you are telling me that this happens.

Q. All right. Well, is there any reason why Zenith couldn't do that in their factory in Chicago?

A. I imagine they could do it, yes, of course.

Q. Now, the other thing that you referred to was the IF, intermediate frequency.

A. That is right.

Q. Now, what significance does that have?

A. With my limited technical knowledge, I will try to explain: You have got two components in your signal when it comes in at the television receiving area. You have got your sound component and your vision component.

Now, these are at a particular frequency or at two particular frequencies, perhaps, once again, as I say, I am limited in my technical knowledge.

432 To amplify the signals within the receiver you don't do them at the input frequency, but you have local oscillators which beat against these incoming frequencies to give a third or intermediate frequency.

Q. To step it down, isn't it?

A. Well, it steps—the intermediate frequency is, as it is suggested, it is intermediate, but then this intermediate frequency is amplified through a number of stages, through coils and condensers and valves, or tubes as you call them, and finally the thing is reversed back, in other words, the intermediate frequency is resolved back into its original frequency components and carried on from there.

* * * * *

436 EXCERPTS FROM NAIL DEPOSITION

Mr. Kayser: I would like to read portions of the deposition which was taken at the American Embassy of the witness Norman H. Nail, who was examined on June 22, 1965, pursuant to commission issued out of this Court.

* * * * *

"Q. Will you state your full name and residence address.

"A. Norman Henry Nail, 123 Hookfield, Epsom, Surrey.

"Q. What is your present employment?

"A. My present employment?

"A. My present employment, I am chief executive officer in the insurance and companies department of the Board of Trade.

"Q. How long have you held that position?

"A. Since September 1959.

437 "Q. Do I understand correctly that the Board of Trade is a department of the English Government?

"A. Yes.

"Q. And that the president of the Board of Trade is a member of the British Cabinet?

"A. Yes.

* * * * *

442 "Q. Could you state what your position was, and trace your various positions and activities down to the year about 1955.

"A. Well, not with actually exact dates, but I can tell you approximately my career in the Board of Trade. I was in the Board of Trade in 1938 as an executive officer—"

The Court: The original shows a correction there, "as an assistant examiner." And let me read the next sentence, because there is some correction there:

"I had actually come to the Civil Service—" that is an insert—"two years before, into the Ministry of 443 Labor off a direct entry exam as an executive officer."

Then you can go on.

Mr. Cook: (Reading.)

"A. (Continuing.) During the years 1940 to '45, I was in the Army. After I came out of the Army I came back to the Board of Trade, first of all, for a few months as an executive officer. Then I was promoted to Higher Executive Officer, and I was working at that time in one of the departments dealing with the con-

trols on industry. From there, when I was promoted, I was promoted to Senior Executive Officer. I went to the Department which is now called Expert Services Branch—it was then called Industries Branch—"

The Court: Here is the insert is "the then called Commercial Relations Industry Branch." Go ahead.

Mr. Cook: (Reading.)

"A. (Continuing.)—that deals with the promotion of the exports trade by contact with individual industries.

"Q. When was that?

444 "A. That was in 1950. From there for a short time I went to Import Licensing Branch as a senior executive officer. I was there only a short time, and then I went back to an Industries Branch."

The Court: And here there is an insert: "I went back to an Industries and Manufacturers Branch."

The next sentence corrected reads:

"I was in the Industrial and Manufacturers Branch from 1952 to 1955."

You can go on.

Mr. Cook: (Reading.)

"A. —when I was promoted Chief Executive Officer, and I went back to the Import Licensing Branch.

"Q. When in 1955 did you go back to the Import Licensing Branch?

"A. In August.

"Q. And your position was what at that time?

"A. Chief Executive Officer.

"Q. How long did you remain in the Import Licensing Branch of the Board of the Board of Trade?

"A. Until September 1959.

445 "Q. You are a Chief Executive Officer during the entire period?

"A. Yes.

"Q. At the time of this transfer to the Import Licensing Branch in August, 1955, what were the functions of the branch?

"A. The branch was applying the control on imports into the United Kingdom by virtue of the powers that the Board of Trade had under the Import Duties and Customs"—

The Court: Just a minute. "Duties" is stricken and "Export" is written in the place of "duties."

Mr. Cook: (Reading.)

"A. —under the Import, Export and Customs Power Defense Act, which was an immediate pre-war transitional power taken by the Government to deal with the emergency.

483 "Q. At the time you were assigned to the Import Licensing Branch of the Board of Trade in August 1955, was the import of television receiving sets from dollar areas authorized under the Open General Import License then in effect?

"A. No, it was not authorized under the open general license.

484 "Q. Does the same answer apply as concerns the importation of radio receiving sets from dollar areas?

"A. Yes.

"Q. At any time during the period that you were acting as a Chief Executive Officer in the Import Licensing Branch, was an open general import license granted by the Board of Trade which did authorize the import of radio and television receiving sets from dollar areas?

"A. Television and radio sets became subject to open general license as from the 8th of June 1959. That is the latest of those ones, the last.

508 "Q. It is correct to say, Mr. Nail, that until the open general license agreement which became effective on June 8, 1959, it is your recollection that it was not possible to import either radio receiving sets or tele-
509 vision receiving sets from dollar areas in commercial quantities?"

Mr. McConnell: I object to that as permitting the witness, without any qualification whatever, to take the function of the judge and determine by conclusory reply a whole branch of this issue, and also that it is highly leading and suggestive, and directs the witness—

The Court: Objection overruled.

Mr. Kayser: Then I added:

"I would like to add that by 'dollar area' I include the United States in my question as being in the dollar area.

"A. Yes."

* * * * * * *

574 ANTHONY RAYMOND JABEZ-SMITH, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kayser.

Q. What is your name, your full name?

A. Anthony Raymond Jabez-Smith.

Q. Where do you live?

575 A. 4 Kensington Court Gardens, London West 8.

Q. And you are admitted to practice as a solicitor in England?

A. I am.

Q. When were you admitted to practice?

A. 1937.

Q. Will you state your present firm?

A. Yes, Herbert Oppenheimer, Nathan & Vandyk.
Q. The address?
A. 20 Copthall Avenue, London Wall E. C. 2.
Q. You are a partner in that firm?
A. I am.
Q. And that is a firm of solicitors?
A. It is.

* * * * * *

578 Q. Now, has your private practice since 1954 involved emphasis in any particular area or field of the law?

A. Yes, it has indeed. I specialized on all matters
579 relating to importation in relationship with government departments generally, particularly with the customs and excise and the Board of Trade.

Q. Has this work involved matters relating to the import restrictions imposed by the Board of Trade?

A. Yes, it has.

Q. And have you through your practice and through your studies of the law and regulations acquired a familiarity with the laws and regulations from time to time governing the import of goods into the United Kingdom?

A. I have.

Q. And have you, through your practice, become familiar with the policies which were from time to time applied by the Board of Trade as to imports of goods during the period prior to June 8, 1959?

A. Yes.

Q. I show you the document which is presently in evidence as Plaintiff's Exhibit 87, which is the Import-Export and Customs Powers Defense Act, 1939, and ask if that Act has been in effect since 1939?

A. Yes, it has, since the 1st of September, 1939.

Q. As you said, this Act was adopted on September 1,

1939; can you state the circumstances which gave rise
580 to the Act?

A. Yes, the outbreak of the European War, the Second World War. It had been prepared, of course, in advance against an emergency of that kind.

581 Q. And in what way did the outbreak of the war call for this act?

A. Well, it was essential that all our foreign currencies available to us would be used only for the purchasing of war material and for food for our people in England, and that all shipping space should be used to the best available purpose, nothing to be spent on luxuries.

Q. Did any of the problems which gave rise to the act in 1939 continue after World War II?

A. They did.

Q. Can you elaborate?

A. Yes. After the end of the war we were extremely short of some foreign currencies, particularly dollars, because during the war we had had to sell all our—when I say "our" I mean the United Kingdom's dollar investments to buy warlike materials, and we had to continue these restrictions?

Q. Sir?

A. We had to continue these restrictions, therefore, to save dollars and other currencies.

633 *Opening Statement on Behalf of Defendant by Mr. McConnell.*

We have the issue of embargo here, and I think I will start with Australia, as to what our proofs would show there.

Mr. McConnell: Now, as I say, the proofs will show, first, that there is an embargo in Australia on certain

goods, and we have the documents here to offer in
634 evidence, but they do not include radios or televisions.

The Court: I mean, for what period, or any period?

Mr. McConnell: Or for any period that's involved or anywhere remotely concerned with this issue.

Next, we haven't any quarrel with the Hazeltine Company or their counsel as to the regulations which have been put in evidence. Our proofs tend to show that those regulations properly construed, and the way they were administered, and under the categories of the products which are involved in this lawsuit, that there was no embargo; that the proofs will show that those regulations contemplated the entry of all goods under them which were consistent with the over-all policy of maintaining or preserving or conserving pounds Australian, or in England pounds Sterling, and that under those regulations goods of the same kind that we are talking about here came in prior to the damage period.

656 Mr. McConnell: I am referring now to the deposition of a witness by the name of William Gundry Mills, your Honor, in England, and we will start at Page 2.

"Q. Will you state for the record your full name
657 and London address.

"A. William Gundry Mills, 19 Albion Street, Hyde Park W 2.

"Q. What is your business or your occupation, Mr. Mills?

"A. I am the Deputy Managing Director of the Economist Intelligence Unit Limited.

"Q. Where is that concern located, that is, what is its address?

"A. Spencer House, 27 St. James Place, S.W. 1.

"Q. Will you tell us generally what the nature of its business is.

"A. It is a research and consultancy organization which undertakes all forms of industrial market research, market advice, forecasting, development and transport studies throughout the world by means of 31 offices and subsidiary companies.

"Q. Are those 31 offices in other places than in London?

"A. That is correct.

"Q. Is that an incorporated company?

"A. It is an incorporated company and a fully-
685 owned subsidiary of the Economist Newspaper Limited."

Mr. McConnell: Now will you turn to page 6.

"Q. I show you a document—"

This is the top of the page.

"Q. I show you a document which is marked for identification Zenith's Deposition Exhibit 2, which purports to be a tabulation of imports into the United Kingdom for radio receiving sets, mains and radio receiving sets other, and ask you whether you can identify that as a page from your report.

"A. Yes, I think so. To me it seems an exact copy of page 135 of our report."

659 Mr. McConnell: Now, mark this Zenith Cross-Claimant Exhibits 25, et cetera.

(The said documents marked Zenith Cross-Claimant's Exhibits 25, 26, 27, 28 and 29 for identification.)

Mr. McConnell: If the Court please, I have had marked for identification in this record the Exhibit 2 referred to in the deposition as Zenith Cross-Claimant's Exhibit 25 for identification.

"Q. I ask you whether you can identify that as a page from your report."

Mr. Francis McConnell: (reading)

"A. Yes, I think so. To me it seems an exact copy of page 135 of our report."

Mr. McConnell: And then there is an objection and we go over to the next page, page 7:

"Q. I show you a document which is marked for identification Zenith Deposition Exhibit No. 3—"

Which, your Honor, I have had marked here as Zenith Cross-Claimant's Exhibit 26 for identification.

"—which I have shown to counsel and ask you if you
660 can identify that as a true copy of a page of that report.

"A. Yes, page 136."

The Court: May I go back a minute? I must have not paid attention, or maybe we haven't got to it; what is this report?

Mr. McConnell: It is your Honor, a report survey of the whole industry made by an expert surveying company.

The Court: For what period of time?

Mr. McConnell: For a period of time which came up to 19—

Mr. Francis McConnell: 1959.

Mr. McConnell: 1959.

Mr. Francis McConnell: April of 1959.

Mr. McConnell: I am going to identify that further.

* * * * *

661 "I will ask to mark the report, the black book which
662 is entitled 'Report on the Production and Marketing of Radio and Television Receivers, Phonographs and Tape Recorders in the United Kingdom, by the Economist Intelligence Unit', be marked for identification as Zenith Deposition Exhibit No. 6."

I will ask that the court reporter mark this for identification as Zenith Cross-Claimant Exhibit 30.

(Said document marked Zenith Cross-Claimant Exhibit No. 30 for identification.)

Mr. McConnell: (reading)

"Q. Referring to the document which is marked for identification Zenith Deposition Exhibit No. 6, can you identify this document as prepared under your supervision and in the ordinary course of business of your company?

"A. Yes.

663 "Q. In whose custody has that document been since its preparation?

"A. This is the master copy. It is held on trust for the Zenith Corporation.

"Q. It has been in your possession and custody?

"A. In our possession, yes.

"Q. Can you tell us whether it is in the same condition now as when it was prepared?

"A. There are no pages missing. It is in exactly the same condition.

"Q. Now, referring to the documents which you have identified as separate pages, Zenith's Deposition Exhibit No. 2—"

which here is Exhibit 25,

"—which purports to be imports into the United Kingdom of radio receiving sets, mains, and radio receiver sets other than mains, can you tell us from what source the figures were obtained that are used in that exhibit?

"A. Nowadays the source would normally have 664 been mentioned at the bottom of the table. In this particular report the source is not mentioned, consequently I requested a senior member of our statistical department to examine the document in relation to the publications of the Board of Trade. The figures here were carefully checked with the annual statement of the trade of the United Kingdom with Commonwealth countries and foreign countries, 1958, compared with the years 1955 to 1957, Volume II.

"Q. Do you have that document here?

"A. Yes.

"Q. You produced that? May I have it, please."

Then I had marked there No. 7. I will ask that it be marked here as 31, Zenith Cross Claimant's Exhibit 31 for identification.

(The said document was thereupon marked Zenith's Cross Claimant Exhibit 31 for identification.)

"Q. I am now handing you Zenith's Deposition Exhibit 7—"

which here is 31 for identification.

665 "—Mr. Mills; can you turn to the page or pages in that document from which you obtained the figures which are contained in Zenith's Deposition Exhibit No. 2?",

which here is Exhibit 25.

"A. I can. It will take some time. I would like to point out that I am myself not a statistician and I do not normally do statistical work. That was the reason for having these figures carefully checked by a senior member of our statistical department, but I have no doubt that I can find them. On page 377.

"Q. Will you tell us whether or not your Zenith deposition Exhibit 2—"

which here is 25 for identification.

"—is a transcript of that page that you just referred to.

"A. It is a part of that page.

"Q. Have you added anything on your exhibit 2 which is not contained on the page to which you have referred?

"A. I can see no difference except that certain fig-

666 ures are included in the page 377 for later years which are not included in our report, presumably due to the

fact that at the time the report was prepared this document was not available in full."

667 Mr. McConnell: I'm on Page 11.

"Q. Would you tell us from what source you obtained or your company obtained, if you know, that Zenith Deposition Exhibit 7?

"A. We purchased this from the Stationary Office.

"Q. Is that an official government publication?

"A. Yes."

Mr. McConnell: And the Commissioner interposed:

"The official title is Her Majesty's Stationary Office.

"A. Yes.

"Q. I show you the document marked for identification Zenith Deposition Exhibit No. 3."

which here is 26,

"which purports to be Imports of Radiograms Complete and Television Sets Complete, and ask you whether you can identify this document as being obtained from any page of the exhibit, Zenith Depo-

668 sition 7?

"A. The first page of the table is on Page 378, the second but last item. The figures here on 377, the last item, the totals for 1956 and 1957 conform exactly. In our report, they are broken down in more detail than they are in the government publication.

"Q. Is the source of your table from that government publication?

"A. The totals are from the Government publication. The breakdown would be from Her Majesty's Customs and Excise.

"Q. Are the figures from the Customs and Excise contained in that government publication?

"A. The government publication is based on the figures provided by the Customs and Excise. It is their only source of information.

"Q. You prepared your tabulation from that document you have been testifying from?

"A. We took this document as the basis for our tabulation. We did not consider it provided sufficient
669 detail, so we made special arrangements for a more detailed breakdown. You will note in comparison that the totals are exactly similar, but we give rather fuller breakdown.

"Q. Where did you obtain the information for the breakdown?

"A. Direct from the Customs and Excise.

"Q. Can you tell us whether those figures are accurate?

"A. The totals are absolutely accurate and the additions of the subtotals reach the same totals in our documents as they do in the publication."

* * * * *

687 Mr. Kayser: All right, now, we will pick up at Page 2 of the direct examination where Mr. McConnell had read some of the qualifications of this man. I will continue.

Mr. McConnell: Page 2?

Mr. Kayser: Yes.

"Q. Do you have some connection with the British Market Research Bureau?

"A. None of any kind—one moment, I am sorry. Allow me to correct that statement; we have no financial connection with the British Market Research Bureau, but for a number of years, which ceased this year, we jointly produced a publication or series of
688 publications entitled 'Consumer Durables.' They undertook the interviewing and we did the economic analysis and forecasting.

"Q. Does your organization do any interviewing itself or make surveys?

"A. It does interviews up to 150 to 200 what we call qualitative interviewing. Where we require consumer interviewing for our market studies we employ other organizations as and when required.

"Q. You referred to the term 'Consumer Durables'; would that definition include television sets?

"A. Yes, all white goods, motor vehicles, television sets, radios and radiograms.

"Q. By 'white goods' I take it you mean refrigerators?

"A. Yes, refrigerators and cookers.

"Q. Do you perform those services for a fee?

"A. Approximately 80 per cent of our work is done for a fee. The balance is done on subscription
689 to various publications of which 'Consumer Durables' was one."

Mr. Kayser: And then we turn over to Page 22, still Mr. McConnell's examination:

"I ask the court reporter to mark these documents 9 through 13, both inclusive.

"(These documents were marked Zenith Deposition Exhibit 9 through 13, respectively.)

"Q. I show you documents which are marked for identification Zenith Deposition Exhibits 9 through 13 and ask whether you can identify these documents as being prepared by your company during or about the time of the dates that they bear?

"A. Yes, I can.

"Q. What were they?"

Mr. Cook: I think you misread the question there.

Mr. Kayser: (Reading.)

"Q. And were they?

"A. They were.

690 "Q. I take it they were prepared in the way that

you testified to here a while back when you were talking about durable goods, consumer goods?

"A. That is correct."

Mr. Kayser: Now we would like marked for identification as Plaintiff's Exhibit 105 the document which was identified and marked on behalf of Zenith at that deposition, being a document headed—or a booklet headed "Durable Consumer Goods, July, 1959, Television Sets," prepared by the Economist Intelligence Unit, Limited in association with the British Market Research Bureau, Limited.

* * * * *

698 Mr. McConnell: If the Court please, at this time I want to offer in evidence documents which have been marked for identification Zenith Cross-Claimant Exhibit 25, which is a transcript of—according to the testimony of Mr. Mills, taken from documents furnished by Her Majesty's Stationery Office with reference to the trade of the United Kingdom in 1958 compared with the years '55 and '57, which purport to show the import of radio receiving sets of mains, that is, those are attached to a main source of current, and radio receiving sets other, including mains, battery and [illegible] radios.

I also want to offer at this time Zenith Cross-Claimant's Exhibit 26 for identification, which purports to be a tabulation of imports into the United Kingdom showing radiograms complete, which is a combination of a radio and a Gramophone, and also television sets complete showing imports from Canada at 1724 complete sets of a pound value in 1956 of 97,880 pounds.

* * * * *

699 Mr. Kayser: All right. We have certain objections, 700 your Honor, first as concerns No. 25, radio receiving sets, I may be mistaken, but there is no breakdown on this exhibit to show dollar imports. There is a heading of Commonwealth Countries, for example, which presum-

ably includes Canada, but Canada is not broken up in that one, so on the radio receiving sets, there is no indication of what the imports were from dollar countries; so we object to that on that ground.

704 Mr. McConnell: Directing your attention to Page 209 in the transcript—

Mr. Kayser: Could we identify the deposition.

Mr. McConnell: The deposition is of Mr. Ribalta, Joseph M. B. Ribalta.

"Q. Would you state your full name, please.

"A. Yes. My full name is Joseph M. B. Ribalta."

The Court: Spell that for my court reporter.

Mr. Francis McConnell: R-i-b-a-l-t-a.

Mr. Thomas McConnell (Reading):

"Q. And where do you live, Mr. Ribalta?

"A. I live in Barcelona, Spain, at Munter Nia 577. It is my home address."

Mr. Kayser: I was starting to say, your Honor, I don't know whether this is procedurally the right time or not, but we object in this hearing, having to do with import restrictions, to any of the reading of the deposition of Joseph Ribalta, who was a Spanish manufacturer of television sets from components imported into Spain, as the deposition shows, from the United States, parts obtained from Zenith.

705 What the situation was in Spain or what happened in Spain has absolutely nothing to do with the question as to whether or not there were import restrictions prior to the damage in Australia and England. If this has any relevancy at all, and we feel that it does not—we feel that it does not, so I'm going to strike the qualification. This deposition was taken and has to do, under Mr. McConnell's theory as we understood it, with the market share issue. We submit it has no relevancy at all to this case,

but it can have no conceivable relevancy to the question of import restrictions into England and Australia.

706 The Court: What is your theory that it has some relevancy in regard to that particular question we are going into?

Mr. McConnell: Well, if the Court please, I'm not offering anything in this deposition on any issue of market share. I am offering this deposition on my theory, and I understand in the trial of lawsuits counsel have different theories of proof and different theories of approaching issues, and maybe the theory is sound and maybe it isn't, and that's going to be determined by your Honor. And my thinking is that the time that should be determined is on final argument of the case.

Now, the theory upon which it is offered is this:

The Court: In substance, what does he say and what is your theory as to why what he says in substance is relevant in this case?

Mr. McConnell: What he says is this: That absent a pool without full restrictions, where the only thing we are dealing with is import restrictions, that he had import restrictions which made it impossible for him to import into Spain complete sets of television or radios, for that matter;

707 That to avoid that restriction, he ordered from Zenith Radio what he called knocked down kits, which was a radio or television chassis set up under the standards, CCIR standards, which is 625 lines, just the same as they are in Australia, and that Zenith produced those knocked down kits for him, sent him instructions on how to reassemble them.

He brought in the components under the import restrictions, they came through the Customs, and he paid the duty on them. Then he reassembled them in Spain, and he used Zenith copyrights, Zenith's name and so forth. And assembling these in competition with local manufacturers or

other importers, he was able to sell those sets in that market over a period of some four years, five years, I believe, as the proofs show.

The theory of this is that absent a pool, dealing only with import restrictions, Zenith would have had its name, its good will, established in two different markets—Australia and in England—and I am meeting a theory here which I don't agree with at all, but I have to meet it in view of the issues that is posed, and that is that Zenith couldn't
708 have had its name before the public, it couldn't have created good will, it couldn't have had an established market for its product prior to the damage period because the claim is import restrictions, not a conspiracy—but a government import restriction prevented the creation of that kind of a market.

And I show by this witness that in Spain, where he had no pool restrictions—he only had the same sort of import restrictions which are involved here in this case—he was able to bring from Zenith these sets and assemble them, and obtain a very large proportion of that market.

Now, I am not interested in the share of his market. I am simply negative in the argument—all it is, your Honor, is an argument. We are prevented from getting into these markets, and they are saying that it didn't make any difference if we were prevented from getting in in the damage period. Before the damage period we couldn't have got in on any basis. There was no key that would unlock this door which the Government had created through its embargo. And I say that there was and Zenith was pre-
709 pared, equipped, and ready to—and did go into it where it was available, where they weren't prevented by the pool.

Now, your Honor will rule—

710 The Court: Are you suggesting that there was some assembler in England that would have imported your components and put them out under the Zenith name

and trade-mark, and thus create some good will prior to the damage period?

Mr. McConnell: Well, we did do it in Spain. We got an importer there to do it, and I am saying, of course we would have done it—

The Court: It is my understanding from what I have heard that this would have been in competition with the British manufacturers, and that that was one of the objectives that the government had in mind in these embargo limitations.

Mr. McConnell: No, I don't understand that at all, your Honor, and the evidence is exactly not that.

The evidence is that the only reason for this was—the only reason was to conserve sterling-dollar exchange.

The Court: That is one of the reasons.

Mr. McConnell: No, this was not an embargo in the sense of protecting the British industry, not at all.

The Court: The essentiality is a feature—

711 Mr. McConnell: The essentiality feature, we get in the market under the essentiality of it by—well, the witness admitted here on the witness stand that if there was a new industry, an assembler going into business, that was taken into account.

If we had an assembler there who was in business, why, of course, they would bring it in. That is a matter of argument on this case. It is my theory of the case.

All I want to do is produce the proof on my theory of the case.

The Court: I think that the best that your proof, your proposed proof—and I am going to take this as an offer of proof—would go to the question of a share of the market and creation of good will prior to the time the embargoes went off on completed sets.

Mr. McConnell: I'm not offering it for good will—I mean for market share. I am offering it to show that there

was a method by which Zenith could have gotten business going in the absence of the pool.

Now, the pool barred the components. We couldn't do this under the pool regulation at all. We were barred
712 by the pool from doing this in England and in Australia. But where we weren't barred, we could do it.

My point is that—and I am going to get to the authorities on it in the argument, and there is plenty of law on this—that where conspirators have destroyed an opportunity to show what you could have done—they are charged with all the onus and incubus of that situation, and all we can do is show by the best evidence—

The Court: You have cited me that law, and I have ridden with you regarding that law, so you don't have to cite it to me again.

Mr. McConnell: I know.

Mr. Kayser: Your Honor—

Mr. McConnell: That is my position, and I am offering it to show that Zenith was equipped to compete in the absence of this pool, in spite of any regulations or import restrictions or anything of the kind.

The Court: Well, eighteen months have gone by—more than eighteen months, I think, since we heard the last evidence in regard to this phase of this double-barreled lawsuit. And it is my recollection, and you may disabuse
713 it from the record if you can—I may be in error—that when Mr. Wright, or one of the parties who testified, indicated that they could sell sets in Canada if they wanted to open up a factory there, and his reply to that was, "No, we make them so profitably in our factory, all we want to ship is completed sets." And in regard to England, my recollection is that he wanted to send completed sets over there, and some little guy in the back of a shop with a screwdriver could fix it up so it wasn't necessary to have a manufacturing plant in England.

714 That is my recollection of the evidence, and I may

be in error. But there was no desire on the part of Zenith, based on what I remember, to want to have things assembled in Britain or Australia or Canada, or open up a plant for that purpose. They just wanted to ship complete sets. And if somebody with a screwdriver could fix it in a back room, why, that was all right with them.

Mr. Kayser: Your Honor, that is true, and I'm afraid Mr. McConnell is rewriting this lawsuit.

Mr. McConnell: No, I'm not rewriting any lawsuit.

Mr. Kayser: As you have said, your Honor, the issue was whether or not completed sets could have been—could get into the three countries, and that is—

The Court: And I think that is the basis—

Mr. Kayser: That is the issue of this hearing.

The Court: That is the basis for my making that restriction. Does your recollection of the evidence coincide with mine?

Mr. Kayser: It does, sir, and I suggest that Mr. McConnell apparently has recognized that he cannot establish that, so now he is retreating to a new theory of action; 715 namely, that this case has to do with components. Because he knows that some components did get in admittedly into the two countries, but that is not the issue.

Mr. McConnell: I'm not retreating to anything. I have never retreated in a lawsuit yet. I'm certainly not going to start retreating now.

My position has always been the same. Of course we want to get them in in England, and we wanted to get into Australia with completed sets. And under the evidence in this case, we would have been in England with completed sets one week, seven days, after the damage period started. Under the evidence in this case, in Australia we would have been in there 60 days after.

We are talking about a new contention which I never heard in this lawsuit. It wasn't urged in the lawsuit. This is an absolutely brand new contention that, because we

are dealing here with a mature market, an assumption of a mature market, you have to have evidence that you could have done something in those markets prior to the damage period. There isn't one iota of evidence in this record,
716 going back to the old record, that either Mr. Wright or Mr. Kaplan assumed in the answer to my inquiry as to their market share a mature market. They took—just a minute, counsel—they took into consideration, they said, all of the relevant factors, and they came up with 2 per cent of the market in Australia and 5 per cent of the market in England, after Wright, who is president of the company, said they would have gotten 10 per cent. But we were very conservative, and having taken into consideration all of the factors involved we cut it down.

Of course we wanted to bring in complete sets. There is no question about that, and I am not trying to prove new damages for components. All I am trying to do is meet a very, very artificial argument conjured up here with no evidence in back of it at all that I have to be in that market to establish good will and all that in order to make my damage proof valid.

Now, that is all that I am meeting, nothing else.

717 The Court: No, Mr. McConnell. I think there is this distinction. I think the impression was given me that while he was figuring this on the basis of a mature market, the theory was that there was no mature market solely because of the pools, and solely because of the conspiracy.

Now, apparently some evidence has been introduced that there was another factor other than that which kept them from having a mature market, and I agree with you—

Mr. McConnell: There is no evidence of that, your Honor, not in this record.

The Court: I agree with you that if the sole basis for there not being a mature market was the conduct of the pool, that they can then not say, "You have no proof of

a mature market," because you can say in response to them, "You are responsible for me not having evidence of a mature market."

Mr. McConnell: That is right.

The Court: I think we are in no difficulty in regard to this mature market thing.

But the thing in controversy is exactly what was the responsibility of there being no evidence of a mature
718 market. Was it solely the conduct of Hazeltine, or was there some other factor that prevented them from having a mature market.

Mr. McConnell: Now, your Honor, let me say this.

If you don't agree with my theory when we get through with this, then, of course, you are not going to pay any attention to this proof.

The Court: Why isn't what you have told me—why can't that be considered an offer of proof?

Mr. McConnell: Well, it isn't very long. It won't take but about five minutes.

The Court: I assume that under the rules, specifically—let me say that am inclined to sustain Mr. Kayser's objection, and under the rules you have a right, under those circumstances, to make an offer of proof.

The reading of this deposition I will consider your offer of proof.

Go ahead and get it in the record.

Mr. McConnell: All right.

You have gotten your residence in Barcelona, Spain, I believe.

"Q. What is your occupation?

719 "A. My occupation is general manager of Telerasa.

"Q. And where is that company located?

"A. This company—

"Q. What is its address?

"A. This company is located in Barcelona, Spain. The name of the street is Enfanta Carlotta 32.

"Q. What does that company do?

"A. The only business of ours is to assemble or manufacture — it depends — the Zenith products. I mean television sets, radio sets, photographs, under the license of the Zenith Radio Corporation.

"Q. And how long have you been engaged in handling Zenith products?

"A. We have been engaged handling Zenith products—I exactly don't recall the exact date, but I would say at least since 1952 or 1953. We became exclusive distributors for the Spanish territory. And in 1959-1960, to be more exact, we arrived to a licensing agreement we have now.

* * * * *

735 Mr. Thomas: Your Honor, Zenith Exhibit No. 4 are the import figures about which Mr. Kayser stated they contained the military imports, and that's what we propose to prove here. Those were the over-all import figures by statistical item number which were duly authenticated and introduced as Zenith No. 4.

The Court: The 210, and then you subtract the military, and it brings it down to a slightly smaller figure?

Mr. Thomas: That is correct, your Honor. The Zenith Exhibit 8 then contains the preface to the volume Overseas Trade in which those very statistics are located. And each one of the preface statements for each of the years indicates clearly on its face that these import statistics contained in Zenith's Exhibit 4 include imports on government account. It states that "They are treated as normal transactions and are an integral part of the overseas trade statistics."

It is also true, although slightly less important, that

the same statistics contained in Zenith's Exhibit 4
736 as explained in the prefaces of Zenith Exhibit 8, include imports into bonded warehouses and migrant effects. That is minor compared to the Government, your Honor.

Now, directly in connection with the inclusion of the Government's Statistics, and to support our statements of this morning and the other day to your Honor that the figures in Zenith's Exhibit 4 are largely military, I would like to have marked for identification as Plaintiff's Exhibits 107, 108, 109, 110, and 111, pages from another publication which we have in the courtroom.

These are just extract pages—"Overseas Trade Statistics." It is another publication of the Commonwealth Statistician, a complementary publication to the underlying documents for Zenith Nos. 4 and 8. This is entitled "Imports Cleared for Home Consumption."

We would like to have marked for identification as Plaintiff's Exhibit 107 Imports Cleared for Home Consumption for 1954-1955;

As Plaintiff's Exhibit 108 for identification, Imports Cleared for Home Consumption, 1955-1956;

737 As Plaintiff's Exhibit 109 for identification, Imports Cleared for Home Consumption, 1956-1957;

As Plaintiff's Exhibit 110 for identification, Imports Cleared for Home Consumption, 1957-1958;

And as Plaintiff's Exhibit 111 for identification, Imports Cleared for Home Consumption, 1958-1959.

738 These documents show, your Honor, under Tariff Item 370-A, which is entitled "Articles Imported by or being the property of the Commonwealth, not being for purposes of trade"—

The Court: Where are you reading from?

Mr. Thomas: Take 107 for identification, your Honor, turn to page 636, which starts the listing under Tariff Item 370-A. About the middle of the page it gives you the title,

Then every item which was imported by or was the property of the Commonwealth not for the purposes of trade is listed by statistical item, so we finally get over to page 661, where our communication equipment is listed. You get to 5261, which is the same statistical item number as in Zenith No. 4, and that is complete wireless receiving sets, and this shows that for the year 1954-55, that the government imported from Canada not for the purposes of trade 201,290 pounds of complete wireless receivers.

739 Now, from the figure of 201,420 pounds which Mr. McConnell read into the record this morning, being from page 74 of the Zenith Exhibit 4, the total import figure, if you subtract the imports by the Commonwealth Government, you would have a residue of 131 pounds worth of complete wireless sets; 131 pounds would include sets allowed into a bonded warehouse or contained in migrant's effects, or even possibly cleared for general purpose of home consumption and for trade. That would include the prototype sets and the manufacturers' samples previously referred to.

We offer these exhibits, your Honor, 107 through 111, inclusive, to explain and clarify the figures that have been admitted in Zenith Exhibit 4, and we have the entire books here in the courtroom so that counsel for Zenith may satisfy themselves that the pages included are from Item 378 and what they purport to be.

I would like to offer those at this time, your Honor.

Mr. McConnell: We have no objection.

The Court: They may be received.

(Said documents, so offered and received in evi-
740 dence, were marked PLAINTIFF'S EXHIBIT 107 through 111.)

* * * * *

744 Mr. Kayser: Now, on England, we would like to offer in evidence the two exhibits which we marked this

morning in connection with our cross examination on the Mills deposition, namely, 103, which is the Durable
745 Consumer Goods booklet, July 1959, on television sets; and 106, which are the pages from the London Economist paper.

The Court: They may be received.

(The said documents, so offered and received in evidence, were marked PLAINTIFF'S EXHIBITS 105 and 106.)

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IN THE UNITED STATES DISTRICT COURT.

• • (Caption—59-C-1847) • •

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause, before the Honorable Richard B. Austin, one of the Judges of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois, on Thursday, October 21, 1965, at 10:00 o'clock, a.m.

857 The Court: The Court wants to review what I recall of this case and what I have heard during the past four days.

As I recall, the patent pool set up in each of these countries, these pools were willing to license anyone who made an application, provided that they complied with the terms of the license, that they not import anything into the country in which the license was granted. The net effect of that was that any licensee would have to manufacture in the country in which the license was granted. This, in effect, prevented the import of what I consider the evidence showed of completed television and radio sets into any of these countries in which these pools operated.

In regard to Canada, there was no barrier which kept out physically any completed radio or television sets. Zenith

could have shipped boxcars and boatloads of completed television sets to Canada, and then their problem was who was going to sell them for them. The dealers were under threats that if they did, they would not receive radios
858 and television sets manufactured by licensees of the Canadian pool.

There was nothing that prevented Zenith from shipping these in and setting up their own sales rooms and hiring their own sales force and selling Zeniths. However, the conduct of the pool was such that it unquestionably was a conspiracy in restraint of trade and tended to restrain trade, and for that reason the Court entered the findings that it did.

However, the Court finds that the reasons that completed television and radio sets were not sold in the United Kingdom and Australia prior to the damage period was due to the fact that they could not pass the iron curtain of government license restrictions or embargoes, and that while the pools were waiting in those countries they were not called upon to exercise the type of conduct that they exercised in Canada.

The Court specifically finds that the reason, prior to the damage period, that no completed television and radio sets entered these two countries was due to governmental restrictions.

859 The question of components, knocked down to be set up in the countries, was not an issue in the lawsuit.

In regard to Canada, in ascertaining damages, the theory advanced under cases of the Supreme Court as to the way to ascertain damages was to assume that Zenith could have, but for the pool, have established a market in Canada by virtue of advertising, and by other sales methods, and that as the damage period arrived their share of the market would have been subject to proof, but due to the conduct of the pool that proof, with that degree of specificity, was not available.

However, the Court does not find that the pool in England and Australia was responsible for Zenith's being unable to establish a share of the market prior to the damage period. It is my opinion, from my recollection of the record, that the same basis for establishing damages was used in England and Australia as was used in Canada; that is, there would have been an established market but for the pool.

It is my impression from the record, since embargoes were mentioned only in a casual way and that in
860 regard to a settlement in 1957 of another lawsuit, that the figures offered as to damages by those who testified regarding them was based upon this prior ability to establish a market which was prevented by the pool.

I intend to request those witnesses who testified to indicate more clearly than the record does what method was used in determining the share of the market in the two countries involved in this hearing, whether it was on the basis that Zenith could have established a share of the market prior to the damage period, or whether the figures they used were figures that would be used in regard to a product newly introduced into the country.

If it is ascertained that damages were figured in regard to these two countries as they were in regard to Canada, where the original premise did not exist, the Court will permit Hazeltine to present proof in rebuttal or present proof to contradict the estimates of damages heretofore given in regard to those two countries.

This may be taken in oral form as my findings of fact and conclusions of law in regard to this particular hearing.
861 As you well know, I have refused to go down the cul-de-sac at this time in regard to the indispensible party regarding which motions are pending, and I now have before me today something that my clerk found in regard to requests for admissions under Rule 36 and objections to interrogatories.

Do those apply to this sale or indispensible party aspect of this case, Mr. Kayser?

Mr. Kayser: Yes, the request for admissions does, your Honor.

The Court: Well, then, I am not going to go into that today either.

I think this disposes of the matter before me in regard to the question of embargoes.

The Court finds that the embargoes and nothing else were the cause of keeping completed sets out of the country prior to the damage period.

I will suggest that we set a date for further testimony regarding the method in which damages were computed in these two countries, Mr. McConnell.

Mr. McConnell: I take it that is preliminary to any other hearings?

The Court: I would think so. I want to get this 862 over with.

Mr. McConnell: Your Honor can set any date and we will meet it.

The Court: I think perhaps—I don't know how this is going to be done, I suppose by marketing experts and that sort of thing.

Mr. Kayser: Your Honor, in connection with that, would it not be appropriate to require Zenith then to bring in their documentation?

The Court: Well, as I understand it, they have used government figures as to—what is this, Exhibit 418?

Mr. Kayser: 218.

The Court: I haven't looked at it in 18 months.

Mr. Kayser: 218, your Honor.

The Court: 218. But I thought that contained government figures as to how many radios and television sets were sold in each country during the damage period.

Mr. McConnell: If your Honor will recall, we had some

discussion of this and your Honor said that we are not going to go into the figures in Exhibits 220 or 218, and we are not going to have a field day with accountants.
863 And I think that is the present state of the record. It would seem to me—

The Court: I think that we might as well keep on approaching this by stages, and I think Stage 1 is to have these witnesses back who testified to the 2 per cent and the 5 per cent and that sort of thing to indicate in greater detail than the record discloses to me the method used, if it was by virtue of the fact that they would have had a market prior to the damage period but for the pool, why, we start with a faulty premise there.

Mr. McConnell: Yes. I think that is the condition precedent, because that is what I want to show, that the damages were not computed on—

The Court: Well, let me say that I am going to set the matter for hearing, first of all, and there may be a recess after we find out what their response is to this, Mr. Kayser, but I am going to set the matter for hearing on Friday, November 12th, at 2:00 o'clock, in regard to the aspects that I have just discussed.

Mr. McConnell: Thank you, your Honor.

The Court: All right.

(Which were all the proceedings had and testimony taken in the above-entitled cause on the days and dates aforesaid.)

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 64
C. A. No. 59-C-1847
RJC

THE COMMONWEALTH OF AUSTRALIA.

AMENDMENTS INCORPORATION.

No. 13 of 1905.

An Act to incorporate Amendments in Amended Acts.

[Assented to 23rd November, 1905.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title

1. This Act may be cited as the *Amendments Incorporation Act* 1905.

Incorporation of amendments in reprint of Acts.

2.—(1.) When any Act has, before or after the commencement of this Act, been amended by—

(*a*) the repeal or omission of certain words or figures, or

(*b*) the substitution of certain words or figures in lieu of any repealed or omitted words or figures, or Ct. Q. 1903, No. 10, s. 7.

(*c*) the insertion of certain words or figures,

then in any reprint of the Act by the Government Printer the Act shall be printed as so amended.

(2.) In every reprint of an Act so amended, reference shall be made in the margin or a footnote to the enactment by which each amendment is made.

(3.) In this Act, "words" includes Part, Division, heading, section, sub-section, paragraph, and schedule.

Reference to Amending Act.

3. There shall be printed on every reprint issued by the Government Printer of any Act which has before or after the commencement of this Act been amended a short reference to every Act by which it has been amended.

Printed and Published for the GOVERNMENT of the COMMONWEALTH of AUSTRALIA by ROBT. S. BRAIN, Government Printer for the State of Victoria.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 64
C. A. No. 59-C-1847

THE COMMONWEALTH OF AUSTRALIA.

AMENDMENTS INCORPORATION.

No. 32 of 1918.

An Act to amend the *Amendments Incorporation Act* 1905.

[Assented to 11th December, 1918.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title and citation.

1.—(1.) This Act may be cited as the *Amendments Incorporation Act* 1918.

(2.) The *Amendments Incorporation Act* 1905, as amended by this Act, may be cited as the *Amendments Incorporation Act* 1905-1918.

Amendment of s. 2.

2. Section two of the *Amendments Incorporation Act* 1905 is amended by inserting, after sub-section (2.), the following sub-section:—

"(2A.) When an Act, which amends a Principal Act in the manner mentioned in sub-section (1.), prescribes a method of citation for the Principal Act as amended by that Act, the Principal Act shall be deemed to be amended by substituting that method of citation for the short title of the Principal Act, and in every reprint of the Act as so amended that method of citation shall be substituted accordingly."

Printed and Published for the GOVERNMENT of the COMMONWEALTH of AUSTRALIA by H. J. GREEN, Acting Government Printer for the State of Victoria.

F.19416.—PRICE 3D.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 65
C. A. No. 59-C-1847

THE COMMONWEALTH OF AUSTRALIA.

ACTS INTERPRETATION ACT 1901-1964.*

An Act for the Interpretation of Acts of Parliament and for Shortening their Language.

BE it enacted by the King's Most Excellent Majesty the Senate and the House of Representatives of the Commonwealth of Australia as follows:—

PART I.—PRELIMINARY.

Heading substituted by No. 52, 1964, s. 6 and Schedule.

Short title.

1. This Act may be cited as the *Acts Interpretation Act* 1901-1964.*

Short title amended; No. 32, 1918, s. 2.

Application of Act.

Substituted by No. 10, 1937, s. 4.

2.—(1.) The *Acts Interpretation Act* 1901, and that Act as amended from time to time, shall, unless the contrary intention appears, apply, and be deemed to have applied, to all Acts of the Parliament including this Act.

(2.) This Act shall bind the Crown.

Parts.

Inserted by No. 52, 1964, s. 2.

2A. This Act is divided into Parts, as follows:—

Part I.—Preliminary (Sections 1-2A).
Part II.—Commencement of Acts (Sections 3-6).
Part III.—Repeal and Expiration of Acts (Sections 7-11).
Part IV.—General Provisions (Sections 12-15A).
Part V.—Words and References in Acts (Sections 16-25).
Part VI.—Judicial Expressions (Sections 26-30).

* The *Acts Interpretation Act* 1901-1964 comprises the *Acts Interpretation Act* 1901, as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table:—

Act.	Number and Year.	Date of Assent.	Date of Commencement.
Acts Interpretation Act 1901 ..	No. 2, 1901	12th July, 1901 ..	12th July, 1901
Acts Interpretation Act 1916 ..	No. 4, 1916	30th May, 1916 ..	30th May, 1916
Acts Interpretation Act 1918 ..	No. 8, 1918	11th June, 1918 ..	11th June, 1918
Acts Interpretation Act 1930 ..	No. 23, 1930	14th August, 1930 ..	14th August, 1930
Acts Interpretation Act 1932 ..	No. 24, 1932	30th May, 1932 ..	30th May, 1932
Acts Interpretation Act 1937 ..	No. 10, 1937	27th August, 1937 ..	11th October, 1937
Acts Interpretation Act 1941 ..	No. 7, 1941	4th April, 1941 ..	4th April, 1941
Defence (Transitional Provisions) Act 1947 ..	No. 78, 1947	11th December, 1947	1st January, 1948
Acts Interpretation Act 1948 ..	No. 79, 1948	17th December, 1948	14th January, 1949
Statute Law Revision Act 1950	No. 80, 1950	16th December, 1950	31st December, 1950
Acts Interpretation Act 1957 ..	No. 69, 1957	5th December, 1957	5th December, 1957
Acts Interpretation Act 1963 ..	No. 19, 1963	28th May, 1963 ..	25th June, 1963
Acts Interpretation Act 1964 ..	No. 52, 1964	30th May, 1964 ..	27th June, 1964

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Part VII.—Powers Conferred and Duties Imposed by Acts (Sections 33-34B).
Part VIII.—Distance and Time (Sections 35-37).
Part IX.—Citation of Acts (Sections 38-40).
Part X.—Offences and Penalties (Sections 41-45).
Part XI.—Instruments and Resolutions (Sections 46-47).
Part XII.—Regulations (Sections 48-50).

Heading substituted by No. 52, 1964, s. 6 and Schedule.

PART II.—COMMENCEMENT OF ACTS.

Meaning of "commencement".
52 & 53 Vict. c. 63, s. 36.

3.—(1.) In every Act the word "commencement", when used with reference to an Act, shall mean the time at which the Act comes into operation.

(2.) Where an Act, or any instrument (including any rules regulations or by-laws) made granted or issued under a power conferred by an Act, is expressed to come into operation on a particular day, it shall come into operation immediately on the expiration of the last preceding day.

Exercise of statutory powers between passing and commencement of Act.
Ibid., s. 37.

4. When an Act is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make grant or issue any instrument (including any rules regulations or by-laws), to give notices, to prescribe forms, or to do any other thing for the purposes of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act for the purpose of bringing the Act into operation at the commencement thereof.

Provided that any instrument made under the power shall not, unless the contrary intention appears in the Act or the contrary is necessary for bringing the Act into operation, come into operation until the Act comes into operation.

Commencement of Acts assented to by the Governor-General.
Sub-section (1.) substituted by No. 10, 1937, s. 6.

5.—(1.) Every Act to which the Royal Assent has been given by the Governor-General for and on behalf of the King on or before the thirty-first day of December, One thousand nine hundred and thirty-seven, shall be deemed to have come into operation on the day on which that Act received the Royal Assent, unless the contrary intention appears in the Act.

Inserted by No. 10, 1937, s. 6.

(1A.) Every Act (other than an Act to alter the Constitution) to which the Royal Assent is given by the Governor-General for and on behalf of the King on or after the first day of January, One thousand nine hundred and thirty-eight, shall come

into operation on the twenty-eighth day after the day on which that Act receives the Royal Assent, unless the contrary intention appears in the Act.

(1B.) Every Act to alter the Constitution to which the Royal Assent is given by the Governor-General for and on behalf of the King on or after the first day of January, One thousand nine hundred and thirty-eight, shall come into operation on the day on which that Act receives the Royal Assent, unless the contrary intention appears in that Act. Inserted by No. 10, 1937, s. 6.

(2.) Every Act reserved for the signification of the King's pleasure thereon shall come into operation on the day on which His Majesty's Assent is proclaimed in the *Gazette* by the Governor-General, unless the contrary intention appears in such Act. Commencement of Acts reserved.

6. The date appearing on the copy of an Act printed by the Government Printer, and purporting to be the date on which the Governor-General assented thereto, or made known the King's Assent, shall be evidence that such date was the date on which the Governor-General so assented or made known the King's assent, and shall be judicially noticed. Evidence of date of assent or proclamation.

PART III.—REPEAL AND EXPIRATION OF ACTS.

Heading substituted by No. 52, 1964, s. 6 and Schedule.

7. The repeal of an Act or part thereof by which a previous Act or part thereof was repealed shall not have the effect of reviving such last-mentioned Act or part thereof without express words. Effect of repeal of Act. 52 & 53 Vict. c. 63, s. 11 (1.).

8.* Where an Act repeals in the whole or in part a former Act, then unless the contrary intention appears the repeal shall not— Effect of repeal. Ibid., s. 38 (2.).

(*a*) revive anything not in force or existing at the time at which the repeal takes effect; or

(*b*) affect the previous operation of any Act so repealed, or anything duly done or suffered under any Act so repealed; or

(*c*) affect any right privilege obligation or liability acquired accrued or incurred under any Act so repealed; or

(*d*) affect any penalty forfeiture or punishment incurred in respect of any offence committed against any Act so repealed; or

* It is provided by section 17 of the *Statute Law Revision Act* 1950 that nothing in that Act limits the application of this section.

(*e*) affect any investigation legal proceeding or remedy in respect of any such right privilege obligation liability penalty forfeiture or punishment as aforesaid;

and any such investigation legal proceeding or remedy may be instituted continued or enforced, and any such penalty forfeiture or punishment may be imposed, as if the repealing Act had not been passed.

Repealed Acts in force until substituted provisions operate. 52 & 53 Vict. c. 63, s. 11 (2).

9. Where an Act repeals in the whole or in part a former Act and substitutes provisions in lieu thereof, the repealed provisions shall remain in force until the substituted provisions come into operation.

References to repealed provisions. Ibid.; s. 38 (1.).

10. Where an Act repeals and re-enacts with or without modification any provisions of a former Act, references in any other Act to the provisions so repealed shall unless the contrary intention appears be construed as references to the provisions so re-enacted.

References to amended Acts. Inserted by No. 4, 1916, s. 2.

10A. Where in any Act reference is made to any other Act, and that other Act is subsequently amended, then unless the contrary intention appears the reference shall, from the date of the amendment, be deemed to be to that Act as so amended.

Expiration of Act. No. 4, 1897 (N.S.W.), s. 9.

11. The expiration of an Act shall not affect any civil proceeding previously commenced under such Act, but every such proceeding may be continued and everything in relation thereto be done in all respects as if the Act continued in force.

Heading substituted by No. 52, 1964, s. 6 and Schedule.

PART IV.—GENERAL PROVISIONS.

Every section a substantive enactment. 52 & 53 Vict. c. 63, s. 8.

12. Every section of an Act shall have effect as a substantive enactment without introductory words.

Headings schedules marginal notes and footnotes. Vict. No. 1058, s. 21. N.Z. 15, 1888, s. 5.

13.—(1.) The headings of the Parts Divisions and Subdivisions into which any Act is divided shall be deemed to be part of the Act.

(2.) Every schedule to an Act shall be deemed to form part thereof.

(3.) Neither the marginal notes nor the footnotes to any Act shall be deemed to be part thereof.

Acts may be altered, &c., in same session. 52 & 53 Vict. c. 63, s. 10.

14. An Act may be altered amended or repealed in the same session of Parliament in which it was passed.

15. Every Act amending another Act shall, unless the contrary intention appears, be construed with such other Act and as part thereof.

Amending to be construed with amended Act. No. 4, 1897 (N.S.W.), s. 12.

15A. Every Act shall be read and construed subject to the Constitution, and so as not to exceed the legislative power of the Commonwealth, to the intent that where any enactment thereof would, but for this section, have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

Construction of Acts to be subject to Constitution. Inserted by No. 23, 1936, s. 3; substituted by No. 10, 1937, s. 7.

PART V.—WORDS AND REFERENCES IN ACTS.

Heading substituted by No. 52, 1964, s. 6 and Schedule.

16. In any Act references to the Sovereign reigning at the time of the passing of such Act, or to the Crown, shall unless the contrary intention appears be construed as references to the Sovereign for the time being.

References to the Sovereign. 52 & 53 Vict. c. 63, s. 30.

16A. Where, in an Act, the Governor-General is referred to, the reference shall, unless the contrary intention appears, be deemed to include—

References to the Governor-General. Inserted by No. 69, 1957, s. 3.

(*a*) the person for the time being administering the Government of the Commonwealth; or

(*b*) where the reference occurs in or in relation to a provision conferring on the Governor-General a power or function which the Governor-General or the person administering the Government of the Commonwealth has for the time being assigned to a person as his deputy, that last-mentioned person in his capacity as deputy,

and shall, unless the contrary intention appears, be read as referring to the Governor-General, or a person so deemed to be included in the reference, acting with the advice of the Executive Council.

16B. Where, in an Act, the Governor of a State is referred to, the reference shall, unless the contrary intention appears, be deemed to include the Governor for the time being of the State or any other person who is, for the time being, the chief executive officer or administrator of the government of the State.

References to the Governor of a State. Inserted by No. 69, 1957, s. 3.

Constitutional and official definitions.

Amended by No. 23, 1930, s. 4; No. 10, 1937, s. 8; No. 80, 1950, s. 3 and First Schedule; and No. 69, 1957, s. 4.

17. In any Act, unless the contrary intention appears—

"The Commonwealth."

(*a*) "The Commonwealth" shall mean the Commonwealth of Australia:

"Australia."

(*b*) "Australia" includes the whole of the Commonwealth:

"The Constitution."

(*c*) "The Constitution" shall mean the Constitution of the Commonwealth:

"The Constitution Act."

(*d*) "The Constitution Act" shall mean *The Commonwealth of Australia Constitution Act*:

"The Parliament."

(*e*) "The Parliament" shall mean the Parliament of the Commonwealth:

* * * * * * *

"The Executive Council."

(*g*) "The Executive Council" shall mean the Federal Executive Council:

"Minister of State."

(*h*) "Minister of State" or "Minister" shall mean one of the King's Ministers of State for the Commonwealth:

"The Minister."

(*i*) "The Minister" shall mean the Minister for the time being administering the Act or enactment in which or in respect of which the expression is used:

"Proclamation."

(*j*) "Proclamation" shall mean Proclamation by the Governor-General published in the *Gazette*:

"The Consolidated Revenue Fund."

(*k*) "The Consolidated Revenue Fund" shall mean the Consolidated Revenue Fund of the Commonwealth:

"The Seat of Government."

(*l*) "The Seat of Government" shall mean the seat of Government of the Commonwealth:

"The *Gazette*."

(*m*) "The *Gazette*" shall mean the *Commonwealth of Australia Gazette*:

"The Government Printer."

(*n*) "The Government Printer" shall include any person printing for the Government of the Commonwealth:

"State."

(*o*) "State" shall mean a State of the Commonwealth:

(*p*) "Territory* of the Commonwealth" or "Territory under the authority of the Commonwealth" includes any Territory governed by the Commonwealth under a Trusteeship Agreement: "Territory of the Commonwealth."

(*q*) "Prescribed" means prescribed by the Act, or by Regulations under the Act: "Prescribed."

(*r*) "Regulations" means Regulations under the Act. "Regulations."

18. In any Act, unless the contrary intention appears— Definitions. 52 & 53 Vict. c. 63, s. 18.

(*a*) "The United Kingdom" shall mean the United Kingdom of Great Britain and Ireland: "The United Kingdom."

(*b*) "British possession" shall mean any part of the King's dominions exclusive of the United Kingdom, and where parts of such dominions are under both a central and a local Legislature all parts under the central Legislature shall for the purposes of this definition be deemed to be one British possession. "British possession."

19. Where in an Act any Minister is referred to, such reference shall unless the contrary intention appears be deemed to include any Minister or member of the Executive Council for the time being acting for or on behalf of such Minister. Mention of Minister. 54 Vict. No. 1058 (Vict.) s. 7. Amended by No. 8, 1918, s. 2.

19A. Where in any Act it is provided that the Act shall be administered by a specified Minister of State of the Commonwealth, or shall be administered, controlled or carried into effect by a specified Department of State of the Commonwealth— Administration of Acts. Inserted by No. 23, 1930, s. 5; substituted by No. 10, 1937, s. 9; amended by No. 7, 1941, s. 3.

(*a*) the reference to that Minister shall be read as a reference to any Minister to whom the administration of the Act is allotted by order of the Governor-General and shall be deemed to include any Minister or Member of the Executive Council for the time being acting for and on behalf of the Minister to whom the administration of the Act is so allotted; and

(*b*) the reference to that Department shall be read as a reference to any Department to which the administration of the Act is allotted by any such order.

19B. Where in any Act, reference is made to a specified Minister of State of the Commonwealth or a specified Department of State of the Commonwealth, and there is no longer any such Minister or Department— References to Ministers and Departments. Inserted by No. 7, 1941, s. 4.

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*Section 12 of the *Papua and New Guinea Act* 1949-1963 reads as follows:—

"12. A reference in any other law of the Commonwealth (whether made before or after the commencement of this Act) to a Territory of the Commonwealth or a Territory under the authority of the Commonwealth shall, unless the contrary intention appears, be deemed to include a reference to—

(*a*) the Territory of New Guinea;

(*b*) the Territory of Papua; and

(*c*) the Territory of Papua and New Guinea as administered under this Act."

(*a*) the reference to the Minister shall be read as a reference to such Minister as is specified by order of the Governor-General, and shall be deemed to include any Minister or Member of the Executive Council for the time being acting for and on behalf of the Minister so specified in the order; and

(*b*) the reference to the Department shall be read as a reference to such Department as is specified by order of the Governor-General.

References in agreements to a Department, Minister, officer or body

Inserted by No. 78, 1947, s. 7.

19c. Where an agreement is or has been entered into, either before or after the commencement of this section, by or on behalf of the Commonwealth and, after the date of the agreement, the functions of a Department of State of the Commonwealth in relation to the administration of matters to which the agreement relates (in this section referred to as " the former Department ") are or have been allotted to another Department (in this section referred to as " the new Department ")—

(*a*) any reference in the agreement to the Minister administering the former Department shall be read as a reference to the Minister administering the new Department or to a member of the Executive Council acting for the time being for him and on his behalf;

(*b*) any reference in the agreement to the former Department shall be read as a reference to the new Department; and

(*c*) any reference in the agreement to an officer or body of persons shall be read as a reference to—

(i) any other officer or body for the time being exercising the powers or performing the functions of the first-mentioned officer or body; or

(ii) such other officer or body as the last-mentioned Minister, by order, specifies.

Mention of an officer in general terms.

No. 4, 1897 (N.S.W.), s. 16.

20. Where in an Act any person holding or occupying a particular office or position is mentioned or referred to in general terms, such mention or reference shall unless the contrary intention appears be deemed to include all persons who at any time occupy for the time being the said office or position.

Office, &c., means office &c., of the Commonwealth.

52 & 53 Vict. c. 63, s. 17.

21. In any Act, unless the contrary intention appears—

(*a*) references to any officer or office shall be construed as references to such officer or office in and for the Commonwealth; and

(*b*) references to localities jurisdictions and other matters and things shall be construed as references to such localities jurisdictions and other matters and things in and of the Commonwealth.

Meaning of certain words. 52 & 53 Vict. c. 63, s. 3. No. 4, 1897 (N.S.W.), s. 21.

22. In any Act, unless the contrary intention appears—

(*a*) "Person" and "party" shall include a body politic or corporate as well as an individual: "Person." "party."

(*b*) "Month" shall mean calendar month: "Month."

(*c*) "Land" shall include messuages tenements and hereditaments, corporeal and incorporeal, of any tenure or description, and whatever may be the estate or interest therein: "Land."

(*d*) "Estate" shall include any estate or interest charge right title claim demand lien or incumbrance at law or in equity: "Estate."

(*e*) "Financial year" shall mean, as respects any matters relating to the Consolidated Revenue Fund or moneys provided by the Parliament or to public taxes or finance, the twelve months ending the thirtieth day of June. "Financial year." Ibid., s. 22.

Rules as to gender and number. Ibid., s. 1.

23. In any Act, unless the contrary intention appears—

(*a*) Words importing the masculine gender shall include females; and

(*b*) Words in the singular shall include the plural, and words in the plural shall include the singular.

Corporations liable to and may sue for penalties. Amended by No. 7, 1941, s. 5.

24.* Every provision of an Act relating to offences punishable on indictment or summary conviction shall unless the contrary intention appears be deemed to refer to bodies corporate as well as to persons, but where the penalty prescribed in respect of any offence is a term of imprisonment only, the court before which the offence is tried may, if it thinks fit, in the case of a body corporate, impose a pecuniary penalty not exceeding—

(*a*) where the term of imprisonment does not exceed six months—One hundred pounds;

(*b*) where the term of imprisonment exceeds six months but does not exceed one year—Two hundred pounds;

(*c*) where the term of imprisonment exceeds one year but does not exceed two years—Five hundred pounds; and

* By virtue of sub-section (2.) of section 3 of the *Acts Interpretation Act* 1941, the amendment made to this section by sub-section (1.) of that section is to be deemed to have come into operation on 3rd September, 1939.

(*d*) where the term of imprisonment exceeds two years —One thousand pounds.

Where under any Act any forfeiture or penalty is payable to a party aggrieved it shall be payable to a body corporate where the body corporate is the party aggrieved.

References to "writing". 52 & 53 Vict. c. 63, s. 20.

25. In any Act expressions referring to writing shall, unless the contrary intention appears, be construed as including references to any mode of representing or reproducing words in a visible form.

Heading substituted by No. 52, 1964, s. 6 and Schedule.

PART VI.—JUDICIAL EXPRESSIONS.

Judicial definitions. Amended by No. 10, 1937, s. 10; and No. 80, 1950, s. 3 and First Schedule.

26. In any Act, unless the contrary intention appears—

"The High Court."

(*a*) "The High Court" shall mean the High Court of Australia:

"Federal Court."

(*b*) "Federal Court" shall mean the High Court or any court created by the Parliament:

"Court exercising federal jurisdiction."

(*c*) "Court exercising federal jurisdiction" shall mean any court when exercising federal jurisdiction and shall include federal courts:

"Court of summary jurisdiction." Ibid., s. 13.

(*d*) "Court of summary jurisdiction" shall mean any justice or justices of the peace or other magistrate of the Commonwealth or part of the Commonwealth, or of a State or part of a State, sitting as a court for the making of summary orders or the summary punishment of offences under the law of the Commonwealth or part of the Commonwealth or under the law of a State or by virtue of his or their commission or commissions or any Imperial Act:

"Justice of the Peace."

(*e*) "Justice of the Peace" includes a Justice of the Peace for a State or part of a State or for a Territory of the Commonwealth.

Meaning of certain words.

27. In any Act, unless the contrary intention appears—

(*a*) The word "indictment" shall include information:

"Oath," "affidavit," "swear," Ibid., s. 3.

(*b*) The words "oath" and "affidavit" shall, in the case of persons allowed by law to affirm declare

or promise instead of swearing, include affirmation, declaration, and promise, and the word "swear" shall in the like case include affirm, declare, and promise:

(*c*) The words "statutory declaration"* shall mean a declaration made by virtue of any Act authorizing a declaration to be made otherwise than in the course of a judicial proceeding. "Statutory declaration." 52 & 53, Vict. c. 63, s. 21.

(*d*) The words "committed for trial," used in relation to any person, shall mean committed to prison with the view of being tried before a judge and jury, or admitted to bail upon a recognisance to appear and be so tried. "Committed for trial." Ibid., s. 27.

28.—(1.) In any Act, unless the contrary intention appears, the expression "Rules of Court" when used in relation to any court shall mean rules made by the authority having for the time being power to make rules or orders regulating the practice and procedure of such court. Rules of Court. Ibid., s. 14.

(2.) The power of such authority to make Rules of Court shall, unless the contrary intention appears, include a power to make Rules of Court for the purpose of any Act which directs or authorizes anything to be done by Rules of Court.

29. Where an Act authorizes or requires any document to be served by post, whether the expression "serve" or the expression "give" or "send" or any other expression is used, then unless the contrary intention appears the service shall be deemed to be effected by properly addressing prepaying and posting the document as a letter, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post. Meaning of service by post. Ibid., s. 26.

30.†—(1.) Where an act or omission constitutes an offence under two or more Acts, or both under an Act and at common law, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those Acts or at common law, but shall not be liable to be punished twice for the same offence. Offences under two or more laws. Ibid., s. 33.

(2.) Where an act or omission constitutes an offence under both— Added by No. 10, 1937, s. 11.

(*a*) an Act and a State Act; or

(*b*) an Act and an Ordinance of a Territory of the Commonwealth,

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* Section seven of the *Statutory Declarations Act* 1959 reads as follows:—

"7. Where, in a law of the Commonwealth or of a Territory (whether passed or made before or after the commencement of this Act), a reference is made to a statutory declaration, the reference includes a reference to a statutory declaration made by virtue of this Act, unless the contrary intention appears in that law."

† *See also* section 11 of the *Crimes Act* 1914–1960.

and the offender has been punished for that offence under the State Act or the Ordinance, as the case may be, he shall not be liable to be punished for the offence under the Act.

Section 31 repealed by No. 52, 1964, s. 3.

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Heading substituted by No. 52, 1964, s. 6 and Schedule.

PART VII.—POWERS CONFERRED AND DUTIES IMPOSED BY ACTS.

Section 32 repealed by No. 10, 1937, s. 12.

* * * * * * *

Exercise of powers and duties, 52 & 53 Vict. c. 63, s. 32.

33.—(1.) Where an Act confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.

by holder of office.

(2.) Where an Act confers a power or imposes a duty on the holder of an office as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of the office.

Power to make includes power to rescind.

Amended by No. 7, 1941, s. 6.

(3.) Where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws) the power shall, unless the contrary intention appears, be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Power to appoint includes power to remove, No. 4, 1897 (N.S.W.), s. 30.

(4.) Where an Act confers upon any person or authority a power to make appointments to any office or place, the power shall, unless the contrary intention appears, be construed as including a power to remove or suspend any person appointed, and to appoint another person temporarily in the place of any person so suspended or in place of any sick or absent holder of such office or place.

subject to conditions.

Provided that where the power of such person or authority to make any such appointment is only exercisable upon the recommendation or subject to the approval or consent of some other person or authority, such power of removal shall, unless the contrary intention appears, only be exercisable upon the recommendation or subject to the approval or consent of such other person or authority.

34. Any court, Judge, justice of the peace, officer, commissioner, arbitrator, or other person authorized by law, or by consent of parties, to hear and determine any matter, shall have authority to receive evidence and examine witnesses and to administer an oath to all witnesses legally called before them respectively.

Power to determine includes authority to administer oath.
No. 4, 1897 (N.S.W.), s. 33.

34A. Where, under any Act, the exercise of a power or function by a person is dependent upon the opinion, belief or state of mind of that person in relation to a matter and that power or function has been delegated in pursuance of that Act, that power or function may be exercised by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter.

Exercise of certain powers and functions by a delegate.
Inserted by No. 78, 1947, s. 7.

34B.—(1.) Where, by an Act or a law of a Territory, provision is made requiring or permitting the presentation (however expressed) of a paper to the Parliament or to both Houses, or to each or either House, of the Parliament, it is sufficient compliance with the provision, in relation to a House, if—

Presentation of papers to the Parliament.
Inserted by No. 19, 1963, s. 2.

(*a*) the paper is presented in that House in accordance with the rules or orders of the House or, if, under the rules or orders of the House, papers are deemed to be presented to the House if they are delivered to the Clerk of the House and recorded in the records of the proceedings of the House, the paper is so delivered and recorded;

(*b*) where the provision provides for a specified person to present the paper or to cause the paper to be presented—that person, or any other person who could by virtue of this Act or of any other Act, or of a law of a Territory, act in the place of that person, makes or causes to be made, as the case may be, the presentation or the delivery of the paper referred to in the last preceding paragraph; and

(*c*) where the provision specifies a period within which the paper is to be presented—the presentation, or the delivery and recording, of the paper referred to in paragraph (*a*) of this sub-section takes place within that period.

(1A.) For the purposes of an Act or a law of a Territory that refers to papers presented (however the presentation is described) to the Parliament or to both Houses, or to each or either House, of the Parliament—

Inserted by No. 52, 1964, s. 4.

(*a*) presentation of a paper in a House of the Parliament in accordance with the rules or orders of the House; or

(*b*) if, under the rules or orders of a House of the Parliament, papers are to be deemed to be presented to the House if they are delivered to the Clerk of the House and recorded in the records of the proceedings of the House—such a delivery and recording of a paper,

shall be deemed to have been presentation of the paper to that House, as described in that Act or law, effected or caused by the person who so presented or delivered the paper or caused the paper to be so presented or delivered.

(2.) In this section, "paper" includes—

(*a*) an ordinance, rule, regulation or by-law;

(*b*) a report; and

(*c*) any other document or instrument whatsoever.

Heading substituted by No. 52, 1964, s. 6 and Schedule.

PART VIII.—DISTANCE AND TIME.

Measurement of distance. 52 & 53 Vict. c. 63, s. 34.

35. In the measurement of any distance for the purposes of any Act, that distance shall, unless the contrary intention appears, be measured in a straight line on a horizontal plane.

Reckoning of time. No. 4, 1897 (N.S.W.), s. 35.

36.—(1.) Where in an Act any period of time, dating from a given day, act, or event, is prescribed or allowed for any purpose, the time shall, unless the contrary intention appears, be reckoned exclusive of such day or of the day of such act or event.

Substituted by No. 79, 1948, s. 2.

(2.) Where the last day of any period prescribed or allowed by an Act for the doing of anything falls on a Saturday, on a Sunday or on a day which is a public holiday or a bank holiday in the place in which the thing is to be or may be done, the thing may be done on the first day following which is not a Saturday, a Sunday or a public holiday or bank holiday in that place.

Expressions of time. 43 & 44 Vict. c. 9. Vict., No. 1370 s. 4

37. Where in an Act any reference to time occurs, such time shall, unless it is otherwise specifically stated, be deemed in each State or part of the Commonwealth to mean the standard or legal time in that State or part of the Commonwealth.

Heading substituted by No. 52, 1964, s. 6 and Schedule.

PART IX.—CITATION OF ACTS.

Reference to Acts. No. 4, 1897 (N.S.W.), s. 24.

38.—(1.) An Act passed by the Parliament of the Commonwealth may be referred to by the word "Act" alone.

(2.) An Act passed by the Parliament of the United Kingdom may be referred to by the term "Imperial Act."

(3.) An Act passed by the Parliament of a State may be referred to by the term "State Act."

Numbering of Acts.

39. The Acts passed in each secular year shall be numbered in regular arithmetical series, beginning with the number one, in the order in which the Governor-General assents thereto, or makes known the King's assent thereto.

Citation of Acts. 52 & 53 Vict c. 63, s. 35. Sub-section (1.) amended by No. 19, 1963, s. 3.

40.—(1.) In any Act, instrument or document—

(*a*) any Act may be cited by its short title, or by reference to the secular year in which it was passed and its number; and

(*b*) any Imperial Act may be cited by its short title (if any) or in such other manner as is sufficient in an Imperial Act; and

(*c*) any State Act may be cited by a reference to the State by the Parliament whereof the Act was passed, together with such mode of reference as is sufficient in Acts passed by such Parliament.

(2.) Any enactment may be cited by reference to the part, section, sub-section, or other division of the Act, Imperial Act, or State Act, in which the enactment is contained.

(3.) Every such reference shall be made according to the copy of such Act printed by the Government Printer of the Commonwealth or of the State, or of the King's Printer in London (as the case may be), or purporting to be so printed.

Heading inserted by No. 10, 1937, s. 13; substituted by No. 52, 1964, s. 6 and Schedule.

PART X.—OFFENCES AND PENALTIES.

Penalties at foot of sections or sub-sections. Inserted by No. 10, 1937, s. 13.

41. The penalty, pecuniary or other, set out—

(*a*) at the foot of any section of any Act; or

(*b*) at the foot of any sub-section of any section of any Act, but not at the foot of the section,

shall indicate that any contravention of the section or of the sub-section respectively, whether by act or omission, shall be an offence against the Act, punishable upon conviction by a penalty not exceeding the penalty mentioned:

Provided that where the penalty is expressed to apply to a part only of the section or sub-section, it shall apply to that part only.

Indictable offences. Inserted by No. 10, 1937, s. 13.

42. Offences against any Act which are punishable by imprisonment for a period exceeding six months shall, unless the contrary intention appears, be indictable offences.

Offences punishable by summary conviction. Inserted by No. 10, 1937, s. 13.

43. Offences against any Act which—

(*a*) are punishable by imprisonment, but not for a period exceeding six months; or

(*b*) not being punishable by imprisonment, are not declared to be indictable offences,

shall, unless the contrary intention appears, be punishable on summary conviction.

Pecuniary penalties. Inserted by No. 10, 1937, s. 13.

44. All pecuniary penalties for any offence against any Act may, unless the contrary intention appears, be recovered in any court of summary jurisdiction.

Imprisonment. Inserted by No. 10, 1937, s. 13.

45. Where under any Act imprisonment may be awarded for any offence, it may be awarded with or without hard labour.

Heading inserted by No. 10, 1937, s. 13; substituted by No. 52, 1964, s. 6 and Schedule.

PART XI.—INSTRUMENTS AND RESOLUTIONS.

Construction of rules, regulations and by-laws. Inserted by No. 10, 1937, s. 13.

46. Where an Act confers upon any authority power to make, grant or issue any instrument (including rules, regulations or by-laws), then—

(*a*) unless the contrary intention appears, expressions used in any instrument so made, granted or issued shall have the same meanings as in the Act conferring the power, and this Act shall apply to any instrument so made, granted or issued as if it were an Act and as if each such rule, regulation or by-law were a section of an Act; and

(*b*) any instrument so made, granted or issued shall be read and construed subject to the Act under which it was made, and so as not to exceed the

power of that authority, to the intent that where any such instrument would, but for this section, have been construed as being in excess of the power conferred upon that authority, it shall nevertheless be a valid instrument to the extent to which it is not in excess of that power.

Construction of resolutions. Inserted by No. 10, 1937, s. 13.

47. Where any resolution is or has been passed by either House of the Parliament in purported pursuance of any Act, then, unless the contrary intention appears, the resolution shall be read and construed subject to the Constitution and to the Act under which it purports to have been passed, to the intent that where the resolution would, but for this section, have been construed as being in excess of authority, it shall nevertheless be a valid resolution to the extent to which it is not in excess of authority.

Heading inserted by No. 10, 1937, s. 13; substituted by No. 52, 1964, s. 6 and Schedule.

PART XII.—REGULATIONS.

Regulations. Inserted by No. 10, 1937, s. 13.

48.*—(1.) Where an Act confers power to make regulations, then, unless the contrary intention appears, all regulations made accordingly—

(*a*) shall be notified† in the *Gazette*;

(*b*) shall, subject to this section, take effect from the date of notification, or, where another date is specified in the regulations, from the date specified; and

(*c*) shall be laid before each House of the Parliament within fifteen sitting days of that House after the making of the regulations.

Amended by No. 80, 1950, s. 3 and First Schedule.

(2.) Regulations shall not be expressed to take effect from a date before the date of notification in any case where, if the regulations so took effect—

(*a*) the rights of a person (other than the Commonwealth or an authority of the Commonwealth) existing at the date of notification, would be affected in a manner prejudicial to that person; or

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* Section 14 of the *Acts Interpretation Act* 1937 reads as follows:—

"14. Where, prior to the commencement of this Act, any regulations to which section ten of the *Acts Interpretation Act* 1904–1934 applied, were expressed to take effect from a date before the date on which those regulations were notified in the *Gazette*, those regulations shall be deemed to have the same force and effect as if this Act had been in force when those regulations were made:

Provided that nothing in this section shall affect the operation of any judgment, order or conviction obtained or made before the commencement of this Act."

† As to the method of notification of regulations, *see* sub-section (3.) of section 5 of the *Rules Publication Act* 1903–1964.

(*b*) liabilities would be imposed on any person (other than the Commonwealth or an authority of the Commonwealth) in respect of anything done or omitted to be done before the date of notification,

and where, in any regulations, any provision is made in contravention of this sub-section, that provision shall be void and of no effect.

(3.) If any regulations are not laid before each House of the Parliament in accordance with the provisions of sub-section (1.) of this section, they shall be void and of no effect.

Substituted by No. 19, 1963, s. 4.

(4.) If either House of the Parliament, in pursuance of a motion of which notice has been given within fifteen sitting days after any regulations have been laid before that House, passes a resolution disallowing any of those regulations, any regulation so disallowed shall thereupon cease to have effect.

Substituted by No. 19, 1963, s. 4.

(5.) If, at the expiration of fifteen sitting days after notice of a motion to disallow any regulation has been given in a House of the Parliament, being notice given within fifteen sitting days after the regulation has been laid before that House—

(*a*) the notice has not been withdrawn and the motion has not been called on; or

(*b*) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of,

the regulation specified in the motion shall thereupon be deemed to have been disallowed.

Inserted by No. 19, 1963, s. 4.

(5A.) If, before the expiration of fifteen sitting days after notice of a motion to disallow any regulation has been given in a House of the Parliament—

(*a*) that House is dissolved or, being the House of Representatives, expires, or the Parliament is prorogued; and

(*b*) at the time of the dissolution, expiry or prorogation, as the case may be—

(i) the notice has not been withdrawn and the motion has not been called on; or

(ii) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of,

the regulation shall, for the purposes of the last two preceding sub-sections, be deemed to have been laid before that House on the first sitting day of that House after the dissolution, expiry or prorogation, as the case may be.

(6.) Where a regulation is disallowed, or is deemed to have been disallowed, under this section, the disallowance of the regulation shall have the same effect as a repeal of the regulation.

Disallowed regulations not to be re-made unless resolution rescinded or House approves.
Inserted by No. 10, 1937, s. 13.
Sub-section (1.) amended by No. 19, 1963, s. 5.

49.—(1.) Where, in pursuance of the last preceding section, either House of the Parliament disallows any regulation, or any regulation is deemed to have been disallowed, no regulation, being the same in substance as the regulation so disallowed, or deemed to have been disallowed, shall be made within six months after the date of the disallowance, unless—

(*a*) in the case of a regulation disallowed by resolution—the resolution has been rescinded by the House of the Parliament by which it was passed; or

(*b*) in the case of a regulation deemed to have been disallowed—the House of the Parliament in which notice of the motion to disallow the regulation was given by resolution approves the making of a regulation the same in substance as the regulation deemed to have been disallowed.

(2.) Any regulation made in contravention of this section shall be void and of no effect.

Prescribing matters by reference to other instruments.
Inserted by No. 52, 1964, s. 5.

49A.—(1.) Where an Act authorizes or requires provision to be made for or in relation to any matter by regulations, the regulations may, unless the contrary intention appears, make provision for or in relation to that matter by applying, adopting or incorporating, with or without modification—

(*a*) the provisions of any Act, or of any regulations, as in force at a particular time or as in force from time to time; or

(*b*) any matter contained in any other instrument or writing as in force or existing at the time when the first-mentioned regulations take effect,

but, unless the contrary intention appears, regulations shall not, except as provided by this sub-section, make provision for or in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

(2.) In this section, "regulations" means regulations or rules under an Act.

Effect of repeal of regulations.
Inserted by No. 10, 1937, s. 13.

50. Where an Act confers power to make regulations, the repeal of any regulations which have been made under the Act shall not, unless the contrary intention appears in the Act or regulations effecting the repeal—

(*a*) affect any right, privilege, obligation or liability acquired, accrued or incurred under any regulations so repealed; or

(*b*) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any regulations so repealed; or

(*c*) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act or regulations had not been passed or made.

By Authority: A. J. Arthur, Commonwealth Government Printer, Canberra.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 66
C. A. No. 59-C-1847

THE COMMONWEALTH OF AUSTRALIA.

THE CUSTOMS ACT 1901-1936.[a]

An Act relating to the Customs.

[Assented to 3rd October, 1901.[b]]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—INTRODUCTORY.

1. This Act may be cited as the *Customs Act* 1901–1936.[a]

Short title.

Short title amended. No. 32, 1918, s. 2.

2. This Act shall commence on a day to be fixed by proclamation.[c]

Commencement.

3. This Act is divided into parts as follows:—

Parts.

Amended by No. 12, 1923, s. 2. and Schedule.

Part I.—Introductory.
Part II.—Administration.
Part III.—Customs Control, Examination, Entries, and Securities generally.
Part IV.—The Importation of Goods.
Division 1.—Prohibited Imports.
Division 2.—The Boarding of Ships and Aircraft.
Division 3.—The Report of the Cargo.
Division 4.—The Entry, Unshipment, Landing and Examination of Goods.
Part V.—The Warehousing of Goods.
Division 1.—Licensed Warehouses.
Division 2.—King's Warehouses.
Part VI.—The Exportation of Goods.
Part VII.—Ships' and Aircraft's Stores.

(a) The *Customs Act* 1901–1936 comprises the *Customs Act* 1901 (No. 6 of 1901), as amended by the *Customs Act* 1910 (No. 36 of 1910), the *Customs Act* 1914 (No. 19 of 1914), the *Customs Act* 1916 (No. 10 of 1916), the *Customs Act* 1920 (No. 41 of 1920), the *Customs Act* 1922 (No. 19 of 1922), the *Customs Act* 1923 (No. 12 of 1923) and the *Customs Act* 1925 (No. 22 of 1925), the *Customs Act* 1930 (No. 6 of 1930), the *Customs Act* 1934 (No. 7 of 1934), the *Statute Law Revision Act* 1934 (No. 45 of 1934), the *Customs Act* 1935 (No. 7 of 1935), and the *Customs Act* 1936 (No. 85 of 1936). See Acts No. 36, 1910, s. 1; No. 19, 1914, s. 1 (2.); No. 10, 1916, s. 1 (2.); No. 41, 1920, s. 1 (3.); No. 19, 1922, s. 1 (3.); No. 12, 1923, s. 1 (3.); No. 22, 1925, s. 1 (3.); No. 6, 1930, s. 1; No. 45, 1934, s. 1, and First Schedule; No. 7, 1935, s. 1, and No. 85, 1936, s. 1. The *Customs Act* 1901 has also been amended by the *Spirits Act* 1906 (No. 21 of 1906), s. 5, and by the *Customs (Inter-State Accounts) Act* 1910 (No. 9 of 1910), s. 2. The amendments so made have been incorporated in this print.

(b) This is the date of assent to the *Customs Act* 1901; the *Customs Act* 1910 was assented to on 1st December, 1910, the *Customs Act* 1914 on 7th December, 1914, the *Customs Act* 1916 on 30th May, 1916, the *Customs Act* 1920 on 10th November, 1920 (proclaimed to commence 11th November, 1920; since repealed by Act No. 12, 1923, s. 3.), the *Customs Act* 1922 on 9th October, 1922, the *Customs Act* 1923 on 17th August, 1923, the *Customs Act* 1925, on 20th September, 1925, the *Customs Act* 1930 on 29th March, 1930, the *Customs Act* 1934 on 24th July, 1934, the *Statute Law Revision Act* 1934 on 6th August, 1934, the *Customs Act* 1935 on 5th April, 1935 (deemed to have commenced on 1st January, 1935), and the *Customs Act* 1936 on 7th December, 1936. The *Spirits Act* 1906 was assented to on 12th October, 1906 (proclaimed to commence on 1st January, 1907) and the *Customs (Interstate Account) Act* 1910 on 7th September, 1910.

(c) Proclaimed to commence on 4th October, 1901. *See Gazette*, 1901, p. 165.

F.2463.—PRICE 2s.

Part VIII.—The Duties.
Division 1.—The Payment and Computation of Duties generally.
Division 2.—Ad valorem Duties.
Division 3.—Deposits Abatements Remissions and Refunds of Duties.
Division 4.—Disputes as to Duties.
Part IX.—Drawbacks.
Part X.—The Coasting Trade.
Part XI.—Agents.
Part XII.—Officers.
Division 1.—Powers of Officers.
Division 2.—Protection to Officers.
Part XIII.—Penal Provisions.
Division 1.—Forfeitures.
Division 2.—Penalties.
Part XIV.—Customs Prosecutions.
Part XV.—Settlement of Cases by the Minister.
Part XVI.—Regulations.
Part XVII.—Miscellaneous.

Interpretation. Amended by No. 41, 1920, s. 3 and by No. 12, 1923, s. 4.

4. In this Act except where otherwise clearly intended—

"Aerodrome" means any landing place for aircraft appointed for the purposes of this Act.

"Aerodrome owner" includes the occupier of any aerodrome.

"Aircraft" includes aeroplanes, seaplanes, airships, balloons or any other means of aerial locomotion.

"Answer questions" means that the person on whom the obligation of answering questions is cast shall to the best of his knowledge, information, and belief truly answer all questions on the subject mentioned that the Collector shall ask.

Definition of "Bank rate of Exchange" inserted by No. 41, 1920, s. 3; omitted by No. 12, 1923, s. 3.

* * * * * * * *

"By authority" means by the authority of the officer of Customs doing duty in the matter in relation to which the expression is used.

"Carriage" includes vehicles and conveyances of all kinds.

"Collector" includes the Comptroller and any Collector of Customs for the State and any principal officer of Customs doing duty at the time and place and any officer doing duty in the matter in relation to which the expression is used.

"Comptroller" means the Comptroller-General of Customs.

"Customs Acts" includes this Act and all laws and regulations relating to Customs in force within the Commonwealth or any part of the Commonwealth.

"Days" does not include Sundays or holidays.

"Documents" includes books.

"Drawback" includes bounty or allowance.

"Dutiable goods" includes all goods in respect of which any duty of Customs is payable.

"*Gazette* notice" means a notice signed by the Minister and published in the *Gazette*.

"Goods" includes all kinds of movable personal property.

"Goods under drawback" includes all goods in respect of which any claim for drawback has been made.

"Justice" means any Justice of the Peace having jurisdiction in the place.

"Master" means the person in charge or command of any ship except a pilot or Government officer.

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Definition of "Mint par rate of exchange" inserted by No. 41, 1920, s. 3; omitted by No. 12, 1923, s. 3.

"Officer" includes all persons employed in the service of the Customs.

"Owner" in respect of goods includes any person (other than an officer of Customs) being or holding himself out to be the owner, importer, exporter, consignee, agent, or person possessed of, or beneficially interested in, or having any control of, or power of disposition over the goods.

"Owner" in respect of a ship or aircraft includes every person acting as agent for the owner or to receive freight or other charges payable in respect of the ship or aircraft. Amended by No. 12, 1923, s. 4.

"Parts beyond the seas" means any country outside of Australia.

"Package" includes every means by which goods for carriage may be cased covered enclosed contained or packed.

"Pilot" means the person in charge or command of any aircraft. Inserted by No. 12, 1923, s. 4.

"Port" means any proclaimed port.

"Prescribed" means prescribed by this Act.

"Produce documents" means that the person on whom the obligation to produce documents is cast shall to the best of his power produce to the Collector all documents relating to the subject matter mentioned.

"Ship" includes every description of vessel used in navigation not propelled by oars only.

"Smuggling" means any importation or introduction or attempted importation or introduction of goods with intent to defraud the revenue.

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Definition of "The Board" inserted by No. 41, 1920, s. 3; omitted by No. 12, 1923, s. 3.

"The Customs" means the Department of Trade and Customs.

Inserted by No. 7, 1936, s. 3.

"The United Kingdom" includes the Channel Islands and the Isle of Man.

"This Act" includes all regulations made thereunder.

"Warehouse" means a warehouse licensed for the purposes of this Act.

"Wharf" means a wharf appointed for the purposes of this Act.

"Wharf owner" includes any owner or occupier of any wharf.

Indication of penalties.

5. The penalties referred to at the foot of sections indicate that any contravention of the section whether by act or omission shall be an offence against this Act punishable upon conviction by a penalty not exceeding (except as hereinafter provided) the penalty mentioned.

Part II.—Administration.

Administration.

6. Until it is otherwise lawfully determined the Customs Acts shall be administered by the Minister of State for the Commonwealth administering the Customs.

Comptroller-General.

7. There shall be a Comptroller-General of Customs who under the Minister shall be the permanent head of the Customs and shall have the chief control of the Customs throughout the Commonwealth.

State Collector.

8. There shall in each State be a Collector of Customs who subject to the Comptroller shall be therein the Chief Officer of the Customs and shall be called the Collector of Customs for the State:

Added by No. 10, 1918, s. 2.

Provided that if the Governor-General notifies by proclamation that for the purposes of the administration of the Customs any portion of a State or Territory is attached to any adjoining State, the Collector of Customs for that adjoining State shall, subject to the Comptroller-General, be the Chief Officer of the Customs in the portion so attached, and be deemed to be the Collector of Customs in that portion.

Powers and functions of principal officer in Northern Territory.

Inserted by No. 12, 1923, s. 3.

8A. The principal officer of Customs doing duty in the Northern Territory shall, in relation to the Northern Territory, have such of the powers and functions of a Collector of Customs for a State as the Comptroller-General specifies by notice published in the *Gazette*.

Delegation by Minister.

9. In relation to any particular matters or class of matters or to any particular State or District the Minister may by writing under his hand delegate any of his powers under any Customs Act (except this power of delegation) so that the delegated powers may be exercised by the delegate with respect to the matters or class of matters specified or the State or District defined in the instrument of delegation.

Delegation by Comptroller.

10. The Comptroller with the written approval of the Minister may similarly delegate any of his powers under any Customs Act.

Revocation of delegation.

11. Every delegation, whether by the Minister or Comptroller shall be revocable in writing at will, and no delegation shall prevent the exercise of any power by the Minister or Comptroller.

Continuance of Officers.

12. All persons acting in the service of the Customs at the commencement of this Act shall be deemed to have been duly appointed.

Cancellation of bonds.

45. All Customs securities may after the expiration of three years from the date thereof or from the time specified for the performance of the conditions thereof be cancelled by the Comptroller.

New sureties.

46. If the Collector shall not at any time be satisfied with the sufficiency of any security the Collector may require a fresh security and a fresh security shall be given accordingly.

Form of Customs security.

47. The form of Customs security in Schedule I. hereto shall suffice for all the purposes of a bond or guarantee under this Act and without sealing shall bind its subscribers as if sealed and unless otherwise provided therein jointly and severally and for the full amount.

Effect of Customs security.

48.—(1.) Whenever any such Customs security is put in suit by the Collector the production thereof without further proof shall entitle the Collector to judgment for their stated liability against the persons appearing to have executed the same unless the defendants shall prove compliance with the condition or that the security was not executed by them or release or satisfaction.

Added by No. 12, 1923, s. 3.

(2.) If it appears to the Court that a non-compliance with a Customs security has occurred, the security shall not be deemed to have been discharged or invalidated, and the subscribers shall not be deemed to have been released or discharged from liability by reason of—

(*a*) an extension of time or other concession;

(*b*) the Customs having consented to, or acquiesced in, a previous non-compliance with the condition; or

(*c*) the Collector having failed to bring suit against the subscribers upon the occurrence of a previous non-compliance with the condition.

Part IV.—The Importation of Goods.

Importation. Amended by No. 12, 1923, s. 2 and Schedule.

49. For the purpose of securing the due importation of goods—

(1) The ship or aircraft may be boarded.

(2) The cargo shall be reported.

(3) The goods shall be entered unshipped and may be examined.

Division 1.—*Prohibited Imports.*

Importations.

50. No prohibited imports shall be imported.
Penalty: One hundred pounds.

Unregistered ships. Amended by No. 12, 1923, s. 2 and Schedule.

51. No goods may be imported in any ship or aircraft which has not been lawfully registered in the country to which she belongs or which has not her certificate of registry on board unless the absence of the certificate is satisfactorily accounted for.

Penalty: One hundred pounds.

52. The following are prohibited imports :— Prohibited imports.

(*a*) Copies made out of the Commonwealth of any work in which copyright subsists which, if made in the Commonwealth, would infringe copyright, and as to which the owner of the copyright has, by himself or his agent, given to the Comptroller evidence of the existence of the copyright and of his ownership thereof and a notice in writing stating that he is desirous that such copies should not be imported into the Commonwealth. Para. (a) substituted by No. 7, 1934, s. 4.

(*b*) False money and counterfeit sterling and any coin or money of the King's dominions not being of the established standard in weight or fineness.

(*c*) Blasphemous indecent or obscene works or articles.

(*d*) Goods manufactured or produced wholly or in part by prison labour or which have been made within or in connexion with any prison, gaol, or penitentiary.

(*e*) Exhausted tea, and tea adulterated with spurious leaf or with exhausted leaves, or being unfit for human use, or unwholesome.

(*f*) Oleomargarine butterine or any similar substitute for butter unless coloured and branded as prescribed.

(*g*) All goods the importation of which may be prohibited by regulation. Amended by No. 7, 1934, s. 4.

(*h*) All goods having thereon or therewith any false suggestion of any warranty guarantee or concern in the production or quality thereof by any persons public officials Government or country.

(*i*) Mineral oil and mineral spirits unless imported under and subject to such restrictions as may be declared by proclamation.

53. No spirits, opium, tobacco, snuff, cigars or cigarettes shall be imported except in packages as prescribed. Restrictions of spirits, &c.

Penalty : One hundred pounds.

54. As to all tea imported :— Tea subject to examination on importation.

(*a*) Samples shall be taken without payment and examined by the Collector.

(*b*) Unless the Collector is as a result of the examination satisfied that the tea is not a prohibited import he shall submit the samples for analysis to an official analyst appointed by the Governor-General for the purposes of this Act.

(*c*) If as the result of the analysis it appears that the tea is a prohibited import it shall after compliance with the next succeeding paragraph be dealt with accordingly.

266. Every such order shall be final and without appeal and shall not be liable to be quashed on any account and a copy thereof shall be delivered to such person and may be enforced in the same manner as the order of a court of summary jurisdiction. Minister's order to be final.

267. The Minister in holding any inquiry under this Part of this Act shall hold such inquiry in public and may Powers of Minister at inquiries.

(*a*) Summon the parties and any witnesses before him.

(*b*) Take evidence on oath.

(*c*) Require the production of documents.

(*d*) Allow reasonable expenses to witnesses and costs to successful parties.

268. No person being summoned as a witness at any inquiry under this Act shall Obligations on witnesses.

(*a*) Disobey such summons:

(*b*) Refuse to be sworn as such witness:

(*c*) Refuse or fail to produce any document he may be required to produce;

(*d*) Being sworn as a witness refuse or fail to answer any question lawfully put to him.

Penalty: Twenty pounds.

269. Any matter of difference arising under this Act, or in relation to the Customs, and not involving a contravention of this Act, may, at the request of the parties interested, be referred to the Minister for decision, and thereupon the Minister may in such manner as he shall think fit inform his mind of the circumstances, and finally decide the difference. Minister may determine differences.

Part XVI.—Regulations.

270.—(1.) The Governor-General may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to this Act or for the conduct of any business relating to the Customs, and in particular for prescribing— Regulations to have force of law. Amended by No. 36, 1910, s. 15.

(*a*) the nature, size, and material of the packages in which imported goods or goods for export, or goods for conveyance coastwise from any State to any other State, are to be packed, or the coverings in which they are to be wrapped;

(*b*) the maximum or minimum weight or quantity of imported goods, or goods for export, or goods for conveyance coastwise from any State to any other State which may be contained in any one package;

(*c*) the conditions of preparation or manufacture for export of any articles used for food or drink by man or used in the manufacture of articles used for food or drink by man;

(*d*) the conditions as to purity, soundness, and freedom from disease to be conformed to by goods for export; and

Added by No. 12, 1923, s. 36.

(*e*) the conditions of carriage of goods subject to the control of the Customs, and the obligations of persons accepting such goods for carriage.

(2.) The regulations may prescribe penalties not exceeding Fifty pounds in respect of any contravention of any of the regulations.

Section 271 omitted by No. 12, 1923, s. 37.

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PART XVII.—MISCELLANEOUS.

Ss. 272 and 273 repealed; No. 9, 1910, s. 2.

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Commissioned ships to be reported.

Amended by No. 12, 1923, s. 2 and Schedule.

274. The person in command of any ship or aircraft holding commission from His Majesty or from any foreign State having on board any goods other than ship's or aircraft's stores laden in parts beyond the seas shall when called upon by the Comptroller or a State Collector or an officer specially authorized by the Minister or the Comptroller or a State Collector so to do—

(*a*) deliver an account in writing of the quantity of such goods, the marks and numbers thereof, and the names of the shippers and consignees, and declare to the truth thereof;

(*b*) answer questions relating to such goods.

Commissioned ships may be searched.

Amended by No. 12, 1923, s. 2 and Schedule.

275. Ships or aircraft under commission from His Majesty or any foreign State having on board any goods other than ships' or aircraft's stores laden in parts beyond the seas may be boarded and searched by an officer especially authorized as mentioned in the last section in the same manner as other ships or aircraft, and the officer may bring any such goods ashore and place them in a King's Warehouse.

Collectors' sales.

276. As to sales by the Collector—

(*a*) The goods shall be sold by auction or by tender and after such public notice as may be prescribed, and where not prescribed after reasonable public notice.

(*b*) The goods may be sold either free of or subject to duty and charges and the price shall be paid in cash on the acceptance of the bidding or tender.

(*c*) No bidding or tender shall be necessarily accepted and the goods may be re-offered until sold at a price satisfactory to the Collector.

Proceeds of sales.

Amended by No. 12, 1923, s. 38.

277. The proceeds of any goods sold by the Collector shall be applied as follows:—

Firstly, in the payment of the expenses of the sale.

Secondly, in payment of the duty.

Thirdly, in payment of the warehouse rent and charges.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 67
C. A. No. 59-C-1847

THE COMMONWEALTH OF AUSTRALIA.

CUSTOMS ACT 1901-1957.*

An Act relating to the Customs.

BE it enacted by the King's Most Excellent Majesty the Senate and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—INTRODUCTORY.

1. This Act may be cited as the *Customs Act* 1901-1957.* Short title. Short title amended; No. 32, 1918, s. 2.

2. This Act shall commence on a day to be fixed by proclamation.† Commencement.

3.‡ This Act is divided into parts as follows:— Parts. Amended by No. 12, 1923, s. 2 and Schedule; and No. 108, 1952, s. 3.

Part I.—Introductory.
Part II.—Administration.
Part III.—Customs Control, Examination, Entries, and Securities generally.

* The *Customs Act* 1901–1957 comprises the *Customs Act* 1901, as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table:—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
Customs Act 1901	1901, No. 6	3rd October, 1901 ..	4th October, 1901 (*See Gazette*, 1901, p. 165)
Spirits Act 1906	1906, No. 21	12th October, 1906 ..	1st January, 1907 (*See Gazette*, 1907, p. 1)
Customs (Inter-State Accounts) Act 1910	1910, No. 9	7th September, 1910..	7th September, 1910
Customs Act 1910	1910, No. 36	1st December, 1910 ..	1st December, 1910
Customs Act 1914	1914, No. 19	7th December, 1914 ..	7th December, 1914
Customs Act 1916	1916, No. 10	30th May, 1916 ..	30th May, 1916
Customs Act 1922	1922, No. 19	9th October, 1922 ..	9th October, 1922
Customs Act 1923	1923, No. 12	17th August, 1923 ..	17th August, 1923
Customs Act 1925	1925, No. 22	26th September, 1925	26th September, 1925
Customs Act 1930	1930, No. 6	29th March, 1930 ..	29th March, 1930
Customs Act 1934	1934, No. 7	24th July, 1934 ..	24th July, 1934
Statute Law Revision Act 1934	1934, No. 45	6th August, 1934 ..	6th August, 1934
Customs Act 1935	1935, No. 7	5th April, 1935 ..	1st January, 1935
Customs Act 1936	1936, No. 85	7th December, 1936 ..	7th December, 1936
Customs Act 1947	1947, No. 54	13th November, 1947	15th November, 1947 (*See Gazette*, 1947, p. 3377)
Customs Act 1949	1949, No. 45	27th October, 1949 ..	1st April, 1950 (*See Gazette*, 1950, p. 723)
Customs Act 1950	1950, No. 56	14th December, 1950	30th November, 1950
Statute Law Revision Act 1950..	1950, No. 80	16th December, 1950	31st December, 1950
Customs Act 1951	1951, No. 56	11th December, 1951	11th December, 1951
Customs Act 1952	1952, No. 108	19th November, 1952	*See* Note 1. on p. 2.
Customs Act 1953	1953, No. 47	26th October, 1953 ..	23rd November, 1953
Customs Act 1954	1954, No. 66	8th November, 1954	6th December, 1954
Customs Act 1957	1957, No. 37	7th June, 1957 ..	*See* Note 2. on p. 2.

[*Footnote continued at foot of next page.*

4748/57.—PRICE 3s.

Part IV.—The Importation of Goods.
Division 1.—Prohibited Imports.
Division 2.—The Boarding of Ships and Aircraft.
Division 3.—The Report of the Cargo.
Division 4.—The Entry, Unshipment, Landing and Examination of Goods.
Part V.—The Warehousing of Goods.
Division 1.—Licensed Warehouses.
Division 2.—King's Warehouses.
Part VI.—The Exportation of Goods.
Part VII.—Ships' and Aircraft's Stores.
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Division 1.—The Payment and Computation of Duties generally.
Division 2.—Ad valorem Duties.
Division 3.—Deposits Abatements Remissions and Refunds of Duties.
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Part IX.—Drawbacks.
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Part XI.—Agents.
Part XII.—Officers.
Division 1.—Powers of Officers.
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Division 2.—Penalties.
Part XIV.—Customs Prosecutions.
Part XV.—Settlement of Cases by the Minister.
Part XVI.—Regulations and By-laws.
Part XVII.—Miscellaneous.

[*Footnote continued from previous page.*]

NOTE 1.—Section 2 of the *Customs Act* 1952 reads as follows:—

"2.—(1.) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.

"(2.) Sections seven and eleven of this Act shall come into operation on a date to be fixed by Proclamation."

The date fixed under sub-section (2.) of section 2 of the *Customs Act* 1952 was 14th December, 1956. *See Gazette* 1956, p. 3889.

NOTE 2.—The *Customs Act* 1957, except section 4, came into operation on 7th June, 1957. By virtue of sub-section (2.) of section 2 of that Act, section 4 came into operation on 7th September, 1957.

† The day fixed was 4th October, 1901. *See Gazette* 1901, p. 165.

‡ The sections contained in the various Parts, and Divisions of Parts, of the *Customs Act* 1901-1957 are as follows:—

Part I., ss. 1–5. Part II., ss. 6–29. Part III., ss. 30–48.
Part IV., s. 49; Division 1, ss. 50–51; Division 2, ss. 58–63; Division 3, ss. 64–67; Division 4, ss. 68–77.
Part V., Division 1, ss. 78–105; Division 2, ss. 106–110. Part VI., ss. 112–126. Part VII., ss. 127–130A.
Part VIII., Division 1, ss. 131–153; Division 2, ss. 153A–161; Division 3, ss. 162–166; Division 4, s. 167.
Part IX., ss. 168–174. Part X., ss. 175–179. Part XI., ss. 180–183.
Part XII., Division 1, ss. 184–219; Division 2, ss. 220–227.
Part XIII., Division 1, ss. 228–230; Division 2, ss. 231–243.
Part XIV., ss. 244–264. Part XV., ss. 265–269. Part XVI., ss. 270–273F. Part XVII., ss. 274–277.

New sureties.

46. If the Collector shall not at any time be satisfied with the sufficiency of any security the Collector may require a fresh security and a fresh security shall be given accordingly.

Form of Customs security.

47. The form of Customs security in Schedule I. hereto shall suffice for all the purposes of a bond or guarantee under this Act and without sealing shall bind its subscribers as if sealed and unless otherwise provided therein jointly and severally and for the full amount.

Effect of Customs security.

48.—(1.) Whenever any such Customs security is put in suit by the Collector the production thereof without further proof shall entitle the Collector to judgment for their stated liability against the persons appearing to have executed the same unless the defendants shall prove compliance with the condition or that the security was not executed by them or release or satisfaction.

Added by No. 12, 1923, s. 8.

(2.) If it appears to the Court that a non-compliance with a Customs security has occurred, the security shall not be deemed to have been discharged or invalidated, and the subscribers shall not be deemed to have been released or discharged from liability by reason of—

(*a*) an extension of time or other concession;
(*b*) the Customs having consented to, or acquiesced in, a previous non-compliance with the condition; or
(*c*) the Collector having failed to bring suit against the subscribers upon the occurrence of a previous non-compliance with the condition.

Part IV.—The Importation of Goods.

Importation.

49. For the purpose of securing the due importation of goods—

Amended by No. 12, 1923, s. 2 and Schedule.

(1) The ship or aircraft may be boarded.
(2) The cargo shall be reported.
(3) The goods shall be entered unshipped and may be examined.

Division 1.—Prohibited Imports.

Division 1 substituted by No. 108, 1952, s. 7.

Prohibition of the importation of goods.

50.—(1.) The Governor-General may, by regulation, prohibit the importation of goods into Australia.

Substituted by No. 108, 1952, s. 7.

(2.) The power conferred by the last preceding sub-section may be exercised—

(*a*) by prohibiting the importation of goods absolutely;
(*b*) by prohibiting the importation of goods from a specified place; or
(*c*) by prohibiting the importation of goods unless specified conditions or restrictions are complied with.

(3.) Without limiting the generality of paragraph (*c*) of the last preceding sub-section, the regulations—

(*a*) may provide that the importation of the goods is prohibited unless a licence or permission to import the goods has been granted as prescribed by the regulations;

(*b*) may provide that a licence or permission so granted may be subject to conditions or requirements to be complied with by the person to whom the licence or permission is granted, either before or after the importation of the goods in respect of which the licence or permission has been so granted; and

(*c*) may provide that the grant or continuance in force of a licence or permission so granted shall be subject to the condition that the applicant for, or the holder of, the licence or permission furnishes to the Customs security for compliance with this Act and for compliance with the conditions or requirements to which the licence or permission is subject.

Prohibited imports.
Substituted by No. 108, 1952, s. 7.

51. Goods, the importation of which is prohibited under the last preceding section, are prohibited imports.

* * * * * * *

Sections 52 to 57 (inclusive) repealed by No. 108, 1952, s. 7.

Division 2.—The Boarding of Ships and Aircraft.

Heading amended by No. 12, 1923, s. 10.

Ships to enter ports.
Amended by No. 12, 1923, s. 2 and Schedule; and No. 108, 1952, s. 20 and Schedule.

58. The master of a ship or the pilot of any aircraft shall not suffer his ship or aircraft to enter any place other than a port or airport unless from stress of weather or other reasonable cause.

Penalty: One hundred pounds.

Ship to bring to on being signalled.
Sub-section (1.) amended by No. 7, 1934, s. 6.

59.—(1.) The master of every ship arriving within three nautical miles of the coast shall bring his ship to for boarding on being approached by or hailed or signalled from any vessel in the service of the Customs having hoisted the Customs flag, or from any vessel in the service of His Majesty or of the Commonwealth having hoisted the proper ensign and pendant.

Penalty: One hundred pounds.

Added by No. 12, 1923, s. 11; amended by No. 7, 1934, s. 6; and No. 108, 1952, s. 20 and Schedule.

(2.) The pilot of every aircraft arriving within three nautical miles of the shore shall bring his aircraft to the nearest airport for boarding on being approached by or signalled from any vessel or aircraft in the service of His Majesty or of the

Unshipment of ships' and aircraft's stores.

Substituted by No. 108, 1952, s. 11.

128. Ships' stores and aircraft's stores which are unshipped or unloaded with the consent of the Collector shall be entered—

(*a*) for home consumption;

(*b*) for warehousing; or

(*c*) for transhipment to another ship or aircraft.

Exemption of certain stores from duty.

Substituted by No. 108, 1952, s. 11.

129. Ships' stores and aircraft's stores used by the passengers or crew, or for the service, of the ship or aircraft, other than ships' stores or aircraft's stores which are specified in the regulations as being stores to which this section does not apply, are not liable to duties of Customs.

Payment of duty on ships' and aircraft's stores.

Repealed by No. 45, 1944, s. 2 and Fourth Schedule; inserted by No. 108, 1952, s. 11.

130. Where ships' stores or aircraft's stores, being ships' stores and aircraft's stores which are specified in the regulations as being stores to which the last preceding section does not apply, are consumed, used or otherwise disposed of in the Commonwealth, the master or owner of the ship or the pilot or owner of the aircraft shall, immediately before the ship or aircraft leaves the last port of departure in the Commonwealth, deliver to the Collector a list, verified by declaration, in accordance with the prescribed form, setting out the ships' stores or aircraft's stores so consumed, used or disposed of since the arrival of the ship or aircraft at the first port of call in the Commonwealth, and duty shall be paid on those stores at the rate in force at the time when the declaration is made.

Taking on board of ships' and aircraft's stores.

Inserted by No. 108, 1952, s. 11. Sub-section (1.) amended by No. 47, 1953, s. 4.

130A.—(1.) The master or owner of a ship, or the pilot or owner of an aircraft entered outwards for parts beyond the seas may make application to the Collector in the prescribed form for permission to take on board stores for the use of the passengers and crew, and for the service, of the ship or aircraft on the voyage to be undertaken.

(2.) The Collector may grant permission to the master, pilot or owner to take on board such stores as the Collector, having regard to the voyage to be undertaken and to the number of passengers and crew to be carried, determines.

PART VIII.—THE DUTIES.

Division 1.—The Payment and Computation of Duties generally.

Exemption.

Added by No. 12, 1923, s. 24.

131.—(1.) No goods the property of the Commonwealth shall be liable to any duty of Customs.

(2.) This section shall not apply to goods intended for purposes of trade, or goods intended for consumption in Australian waters on trading vessels, or intended for consumption within the Commonwealth on trading aircraft, owned or managed by the Commonwealth.

Fish caught by Australian vessel not subject to duty or Customs control.
Inserted by No. 7, 1934, s. 11.

131A. Fish and other goods the produce of the sea which are caught or gathered by a vessel which—

(*a*) is registered in Australia, and

(*b*) was fitted out for the voyage during which those fish or goods were caught or gathered at a port or place in Australia,

shall not, when brought into Australia by that vessel, or by a tender (which is registered in Australia) of that vessel, be liable to any duty of Customs, or be subject to the control of the Customs.

Import duties.

132. All import duties shall be paid at the rate in force when the goods are entered for home consumption.

Export duties.

133. All export duties shall be finally payable at the rate in force when the goods are actually exported but in the first instance payment shall be made by the owner to the Collector at the rate in force when the goods are entered for export.

Weights and measures.

134. Where duties are imposed according to weight or measure the weight or measurement of the goods shall be ascertained according to the standard weights and measures by law established.

Proportion.

135. Where duties are imposed according to a specified quantity weight size or value the duties shall apply in proportion to any greater or lesser quantity, weight, size or value.

Duty how fixed.

136. Whenever goods are sold or prepared for sale as or are reputed to be of a size or quantity greater than their actual size or quantity duties shall be charged according to such first-mentioned size or quantity.

Australian currency.
Amended by No. 54, 1947, s. 3.

137. All duties shall be paid in Australian currency.

Highest duties to be charged.

138. If any goods enumerated in the Tariff are or can be classed under two or more names headings or descriptions with a resulting difference as to duty duty shall be charged when it is a difference between liability to or freedom from duty and the higher or highest of the duties applicable shall be charged when it is a difference as to two or more duties.

Substitutes for dutiable goods.

139. Whenever any goods are imported which in the opinion of the Minister are a substitute for any dutiable goods or are intended to be or can be used as such substitute or for any purpose for which such dutiable goods can be used or for any similar purpose the Minister may by *Gazette* notice direct that

such first mentioned goods shall be charged with the duty chargeable upon such dutiable goods and the same shall be so charged accordingly.

Duty on parts.

140.—(1.) Whenever any dutiable goods are composed of two or more separate parts any part though imported by itself shall if so directed by the Minister be chargeable with duty at the rate applicable to the complete goods.

Substituted by No. 7, 1934, s. 12.

(2.) When the duty on the complete goods is specific only or either specific or *ad valorem*, according to whichever returns the higher duty, or both specific and *ad valorem*, the Minister may fix the proportion of the specific rate that shall be applied in determining the amount of duty payable on any part of such goods.

Duty on condensed articles.

141. Duty shall be charged on all essences condensations concentrations or preparations of goods liable to duty according to the quantity or equivalent of dutiable goods into which such essences condensations concentrations or preparations can be converted according to a standard to be prescribed.

Measurement for duty.

142. Goods charged with duty by measurement shall at the expense of the owner be heaped piled sorted framed or otherwise placed in such manner as the Collector may require to enable measurement and account thereof to be taken; and in all cases where the same are measured in bulk the measurement shall be taken to the full extent of the heap or pile.

Goods *in transitu*.

143. Goods exported to Australia from any country but passing through another country shall be valued for duty as if they were imported directly from such first mentioned country.

Proprietary medicines.

144. All medicinal or toilet preparations not completely manufactured but imported for completing the manufacture thereof or for the manufacture of any other article by the addition of any ingredient or by mixing such preparations or by putting up or labelling the same alone or with other articles or compounds under any proprietary or trade name shall be irrespective of cost valued for duty and duty shall be paid thereon at the ordinary market value in the country whence imported of the completed preparation when put up and labelled under such proprietary or trade name less the actual cost of labour and material used or expended in Australia in completing the manufacture thereof or of putting up or labelling the same.

Value of goods sold.

145. When the duty on any goods sold at any Collector's sale shall be *ad valorem* the value of such goods shall if approved by the Collector be taken to be the value as shown by the sale.

Strength of spirits.

146. The strength of spirits may be ascertained for the purposes of duty by means of a hydrometer approved by the Comptroller.

Obscuration.

147. If in the opinion of the Collector the strength of any spirits cannot immediately be accurately ascertained by hydrometer the strength may be ascertained after distillation or in any prescribed manner.

Derelict goods dutiable.

148. All goods derelict flotsam jetsam or lagan or landed saved or coming ashore from any wreck or sold as droits of Admiralty shall be charged with duty as if imported in the ordinary course.

As to payment of duty on goods in manifest but not produced or landed.

Amended by No. 12, 1923, s. 2 and Schedule.

149. If any dutiable goods which are included in the report of any ship or aircraft shall not be produced to the officer the master or owner of the ship or the pilot or owner of the aircraft shall on demand by the Collector pay the duty thereon as estimated by the Collector unless the goods are accounted for to the satisfaction of the Collector.

Samples.

150. Small samples of the bulk of any goods subject to the control of the Customs may subject to the prescribed conditions be delivered free of duty.

Samples.

151. Goods the produce of Australia or samples of duty paid goods sent out of Australia may subject to any prescribed conditions be re-imported or brought back to Australia without payment of duty.

Conditions relating to application of Preferential Tariff.

Substituted by No. 7, 1934, s. 13.

Sub-section (1.) amended by No. 85, 1936, s. 2.

151A.—(1.) For the purposes of any Customs Tariff (whether passed before or after the commencement of this section) which specifies in respect of any goods rates of duties of Customs lower than the Intermediate Tariff in respect of those goods, the following goods shall, subject to this section, be deemed to be the produce or manufacture of the United Kingdom:—

(*a*) Goods which are wholly produced or wholly manufactured in the United Kingdom from materials in one or more of the following classes:—

(i) Materials wholly produced or wholly manufactured in the United Kingdom or in Australia;

(ii) Imported unmanufactured raw materials;

(iii) Imported manufactured raw materials as determined by the Minister;

(*b*) Goods of the factory or works cost of which not less than seventy-five per centum is represented—

(i) by labour or material of the United Kingdom; or

(ii) by labour or material of the United Kingdom and labour or material of Australia;

(*c*) Goods of a class or kind not commercially produced or manufactured in Australia and of the factory or works cost of which not less than twenty-five per centum is represented—

(i) by labour or material of the United Kingdom; or

(ii) by labour or material of the United Kingdom and labour or material of Australia.

(2.) Where in relation to any class or kind of goods to which paragraph (*c*) of the last preceding sub-section applies the Minister is satisfied that it is desirable that fifty per centum should be substituted for the percentage specified in that paragraph, the Minister may so determine and thereupon that paragraph shall apply to that class or kind of goods as if fifty per centum were so substituted accordingly.

(3.) No goods shall be deemed to be the produce or manufacture of the United Kingdom unless the final process of their production or manufacture was performed in the United Kingdom.

(4.) The provisions of this section shall apply, *mutatis mutandis*, in relation to goods which are imported from any country in respect of which a Customs Tariff within the meaning of sub-section (1.) of this section applies, in like manner as they apply in relation to goods imported from the United Kingdom. Substituted by No. 85, 1936, s. 2.

(5.) For the purposes of the last four preceding sub-sections the Minister may, from time to time, determine—

(*a*) what shall be deemed to be manufactured raw materials;

(*b*) the method of determining factory or works cost and the value of labour or material; and

(*c*) whether any goods are of a class or kind not commercially produced or manufactured in Australia.

(6.) Any determination of the Minister in pursuance of sub-section (2.) or (5.) of this section shall be notified in the *Gazette*.

(7.) In this section "unmanufactured raw materials" means natural and primary products which have not been subjected to any industrial processes except the ordinary processes of primary production, as, for example, animals (including parts

obtained in the killing thereof, for instance, bones, hides and skins, raw or sun dried), minerals in their natural state, ores, plants (including parts of plants as, for example, barks, fruits, nuts, grain or seeds, in their natural state), unwrought logs, crude petroleum, greasy wool, raw cotton and other natural and primary products.

(8.) Where, in the application of this section, any question arises—

(*a*) as to whether a material is an unmanufactured raw material; or

(*b*) as to the country of production or manufacture of any goods,

the question shall be determined by the Minister and his decision thereon shall be final.

(9.) Notwithstanding anything contained in this section, the Minister may admit, as the produce or manufacture of the United Kingdom, any cinematograph film which is, under any law of the United Kingdom relating to the registration of cinematograph films, certified by the Board of Trade of the United Kingdom to be registered as a British film.

Added by No. 85, 1936, s. 2.

(10.) In this section, "Intermediate Tariff" means the rates of duty set out in the column headed "Intermediate Tariff" in the schedule to any Act imposing duties of Customs, in respect of goods in relation to which the expression is used.

Conditions relating to application of Intermediate Tariff.

Inserted by No. 85, 1936, s. 3.

151B.—(1.) Where the Governor-General, in pursuance of any power conferred by any other Act, by proclamation declares that the Intermediate Tariff shall apply to such goods specified in the proclamation as are the produce or manufacture of the country specified in the proclamation, those goods shall be deemed to be the produce or manufacture of that country if they are produced or manufactured as prescribed or if such conditions as are prescribed are complied with in respect of those goods, and they are not goods to which, by reason of their compliance with the conditions prescribed by this Act or otherwise for the application of rates of duty lower than the Intermediate Tariff, such lower rates of duty apply.

(2.) In this section, "Intermediate Tariff" means the rates of duty set out in the column headed "Intermediate Tariff" in the schedule to any Act imposing duties of Customs, in respect of goods in relation to which the expression is used.

Alteration of agreements where duty altered.

Amended by No. 56, 1950, s. 4.

152. If after any agreement is made for the sale or delivery of goods duty paid any alteration takes place in the duty collected affecting such goods before they are entered for home consumption, or for export, as the case may be, then in the absence of

express written provision to the contrary the agreement shall be altered as follows:—

(*a*) In the event of the alteration being a new or increased duty the seller after payment of the new or increased duty may add the difference caused by the alteration to the agreed price.

(*b*) In the event of the alteration being the abolition or reduction of duty the purchaser may deduct the difference caused by the alteration from the agreed price.

(*c*) Any refund or payment of increased duty resulting from the alteration not being finally adopted shall be allowed between the parties as the case may require.

Recovery of duties.

153. All duties shall constitute Crown debts charged upon the goods in respect of which the same are payable and payable by the owner of the goods and recoverable at any time in any court of competent jurisdiction by proceedings in the name of the Collector.

Division 2.—Ad Valorem Duties.

Application of Division.

Inserted by No. 56, 1950, s. 5.

153A. The provisions of this Division relating to value for duty apply to the value for duty of imported goods.

Value for duty, how ascertained.

Substituted by No. 19, 1922, s. 2.

Sub-section (1.) amended by No. 54, 1947, s. 4.

154.—(1.) When any duty is imposed according to value, the value for duty shall be the sum of the following:—

(*a*) (i) the actual money price paid or to be paid for the goods by the Australian importer plus any special deduction, or

(ii) the current domestic value of the goods,

whichever is the higher; and

(*b*) all charges payable or ordinarily payable for placing the goods free on board at the port of export.

(2.) In the case of goods consigned for sale in Australia the value for duty shall be the amount which would be the value for duty if the goods were at date of exportation sold to an Australian importer instead of being consigned for sale in Australia.

(3.) In this section—

"Current domestic value" means the amount for which the seller of the goods to the purchaser in Australia is selling or would be prepared to sell for cash, at the date of exportation of those goods, the same quantity of identically similar goods to any and every purchaser in the country of export for consumption in that country; and

"Special deduction" means any discount or other deduction allowed to the Australian importer which would not ordinarily have been allowed to any and every purchaser at the date of exportation of an equal quantity of identically similar goods.

Production of genuine invoice. Substituted by No. 19, 1922, s. 3.

155.—(1.) When entry is made of goods upon which duty is imposed according to value, the owner shall deliver to the Collector with the entry the genuine invoice for the goods and shall make, in the presence of the Collector, a declaration in the prescribed form.

(2.) The invoice produced shall be stamped by the Collector with the Customs stamp, and shall be again produced when required prior to the delivery of the goods for home consumption or for warehousing.

(3.) The absence from an invoice of the Customs stamp shall be *prima facie* evidence that the invoice was not so delivered or produced.

(4.) If the Collector is satisfied—

(*a*) that no genuine invoice has been issued for the goods; or

(*b*) that the genuine invoice for the goods cannot be produced,

he may, upon receipt of evidence to his satisfaction of the value for duty of the goods, dispense with the production of the genuine invoice.

Meaning of genuine invoice. Substituted by No. 19, 1922, s. 4.

156.—(1.) The "genuine invoice" means the original invoice, in the prescribed form, prepared and issued by the seller in the country whence the goods were exported, showing *inter alia* the true description of the goods, the country of their origin, the actual money price paid or to be paid for the goods by the Australian importer and the current domestic value as defined in section one hundred and fifty-four of this Act, and complying with the provisions of the next succeeding sub-section.

(2.) If in arriving at the actual money price paid or to be paid allowance has been made in respect of any special deduction, as defined in section one hundred and fifty-four of this Act, there shall be indicated on the genuine invoice the nature and amount of that deduction.

(3.) In the case of goods consigned for sale in Australia the "genuine invoice" means a document in all respects complying with the requirements of the foregoing sub-sections of this section and the particulars to be shown in that invoice are those which would be required if the goods were sold to an Australian importer instead of being consigned for sale in Australia.

Value for duty to be in Australian currency.

Substituted by No. 54, 1947, s. 5.

157.—(1.) Where any amount which is, under any other provision of this Act, required to be taken into account for the purpose of ascertaining the value for duty of any goods is not an amount in Australian currency, the amount to be so taken into account shall be the equivalent in Australian currency of that amount, ascertained according to a fair rate of exchange at the date of exportation of the goods.

(2.) For the purposes of this section, the Minister may, where he considers it desirable so to do for the avoidance of doubt, specify, by notice published in the *Gazette*, a rate which is to be deemed to be, or to have been, a fair rate of exchange in relation to any currency—

(*a*) on a date, or during a period, preceding the date of publication of the notice; or

(*b*) from the date of publication of the notice, or an earlier date specified in the notice, until the revocation of the notice.

(3.) The rate of exchange specified in relation to any currency in pursuance of the last preceding sub-section shall, in relation to the value for duty of any goods exported on the date or during the period to which the rate so specified applies, be the rate of exchange which shall be applied for the purposes of sub-section (1.) of this section in respect of the currency specified in the notice.

(4.) In any case in which the rate of exchange to be applied is not ascertained by virtue of the last preceding sub-section, and in which doubt exists as to that rate, the Minister may specify a fair rate of exchange to be applied for the purposes of the particular case.

* * * * * * *

Sections 157A-157F inserted by No. 41, 1920, s. 4; repealed by No. 12, 1923, s. 3.

Value may be assessed.

158. Whenever the Collector has a doubt as to the accuracy of the declared value of dutiable goods he may detain such goods and assess the value thereof.

Should the owner object to the value so assessed he may request that the value may be ascertained by experts in manner prescribed.

Should the owner refuse to pay the duty as assessed by the Collector or ascertained by experts the Collector may sell the goods.

The provisions of this section shall not apply in cases where the Minister is of opinion that any evasion of this Act has been committed or attempted.

Blank invoices.

159. No person shall send or bring into Australia or have in his possession without reasonable excuse any blank or partly blank invoice form capable of being filled up and used as a genuine invoice.

Penalty: One hundred pounds.

Minister to determine value in some cases.

160. Whenever it is difficult to determine the value of goods for duty, either because the goods are not sold for use or consumption in the country of production or because a lease of the goods or the right of using the same is sold or given but not the right of property therein, or because the goods have a royalty imposed thereon and the royalty is uncertain or is not a reliable means of estimating the value of the goods, or because the goods are usually or exclusively sold by or to agents or by subscription or are sold or imported in or under any other unusual or peculiar manner or conditions (of all which matters the Minister shall be judge) the Minister may determine the value for duty of the goods.

Customs may take goods on paying the declared value plus 10 per cent.

161.—(1.) For the protection of the revenue against the under-valuation of goods subject to *ad valorem* duties any goods entered as of a specified value may at any time before sale and delivery to a person who shall prove to the satisfaction of the Collector that he purchased and took delivery in good faith and without any knowledge of the entry and subject as may be prescribed be purchased by the Customs at their declared value with an addition of Ten pounds per centum on the amount of such value.

(2.) The purchase shall be effected by the seizure of the goods by an officer and written notice of the seizure given to the owner.

(3.) The officer shall remove the goods to a warehouse or some place of security, and the owner shall thereupon be entitled to the purchase money.

(4.) The goods shall become the property of the King immediately on seizure, and shall afterwards be disposed of as may be prescribed or as the Collector may direct.

(5.) A refund in whole or in part of any duty paid on the goods may be made by the Collector.

(6.) This section shall not limit or restrict any other power possessed by the Customs relating to the goods.

Division 3.—Deposits, Abatements, Remissions, and Refunds of Duties.

Delivery of goods upon giving of security or undertaking for payment of duty.

Substituted by No. 108, 1952, s. 12.

162.—(1.) Where goods the property of a person included in a prescribed class of persons are imported or a person imports goods included in a prescribed class or goods intended for a prescribed purpose and intends to export those goods, the Collector may grant to the person importing the goods permission to

269. Any matter of difference arising under this Act, or in relation to the Customs, and not involving a contravention of this Act, may, at the request of the parties interested, be referred to the Minister for decision, and thereupon the Minister may in such manner as he shall think fit inform his mind of the circumstances, and finally decide the difference. Minister may determine differences.

PART XVI.—REGULATIONS AND BY-LAWS.

Heading amended by No. 108, 1952, s. 18.

270.—(1.) The Governor-General may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to this Act or for the conduct of any business relating to the Customs, and in particular for prescribing— Regulations to have force of law. Sub-section (1.) amended by No. 36, 1910, s. 15; and No. 12, 1923, s. 36.

(*a*) the nature, size, and material of the packages in which imported goods or goods for export, or goods for conveyance coastwise from any State to any other State, are to be packed, or the coverings in which they are to be wrapped;

(*b*) the maximum or minimum weight or quantity of imported goods, or goods for export, or goods for conveyance coastwise from any State to any other State which may be contained in any one package;

(*c*) the conditions of preparation or manufacture for export of any articles used for food or drink by man or used in the manufacture of articles used for food or drink by man;

(*d*) the conditions as to purity, soundness, and freedom from disease to be conformed to by goods for export; and

(*e*) the conditions of carriage of goods subject to the control of the Customs, and the obligations of persons accepting such goods for carriage.

(2.) The regulations may prescribe penalties not exceeding Fifty pounds in respect of any contravention of any of the regulations. Added by No. 36, 1910, s. 15.

271. Where— Minister may make by-laws. Substituted by No. 47, 1953, s. 6.

(*a*) an item of a Customs Tariff, or a proposed item of a Customs Tariff, is expressed to apply to goods, or to a class or kind of goods, as prescribed by departmental by-laws; or

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 62
C. A. No. 39-C-1847

STATUTORY RULES

1939. No. 163.

REGULATIONS UNDER THE CUSTOMS ACT 1901-1936.*

I, THE GOVERNOR-GENERAL, in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *Customs Act* 1901-1936.

Dated this twenty-ninth day of November, 1939.

GOWRIE
Governor-General.

By His Excellency's Command,

JOHN N. LAWSON
Minister of State for Trade and Customs.

Customs (Import Licensing) Regulations.

Short title.

1. These Regulations may be cited as the Customs (Import Licensing) Regulations.

Definitions.

2. In these Regulations, unless the contrary intention appears—
"licence" means a licence granted in pursuance of these Regulations;
"licensing officer" means an officer authorized by the Minister to act as a licensing officer for the purpose of these Regulations.

Prohibition of imports.

3. The importation of any goods shall be prohibited unless—
(*a*) a licence to import the goods is in force and the terms and conditions (if any) to which the licence is subject are complied with; or
(*b*) the goods are excepted from the application of these Regulations.

Application of Regulations.

4. These Regulations shall apply with respect to the importation of any goods notwithstanding that a licence or other authority for the importation of the goods is in force under the provisions of any other law.

Saving of other laws.

5. The grant of a licence under these Regulations with respect to any goods or the exception of any goods from the application of these Regulations shall not absolve any person from the obligation to comply with the provisions of any other law relating to the importation of goods.

Applications for licences.

6.—(1.) Any person desiring to import goods not excepted from the application of these Regulations shall make application in accordance with such form as the Minister directs for a licence to import the goods.

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* Notified in the *Commonwealth Gazette* on 1st December, 1939.

2307/56.—Price 3d.

(2.) The application shall be delivered, in such manner as the Minister directs, to the Collector at the port at which it is proposed to import the goods:

Provided that where the Minister so directs the application shall be delivered to the Comptroller-General of Customs.

Licence not to be applied for unless goods ordered.

7. A person shall not, except where the Minister otherwise approves, apply for a licence to import any goods unless he intends forthwith to give, to the overseas supplier, firm directions for the exportation to Australia of all the goods (other than goods so exported at the date of the grant of the licence).

Notification of directions for exportation to Australia.

8.—(1.) Any person to whom a licence is granted shall, except insofar as the Minister otherwise directs—

(*a*) if firm directions for the exportation, to Australia, of all of the goods to which the licence relates (other than goods so exported at the date of the grant of the licence) are not despatched to the overseas supplier within one month after that date;

(*b*) if any firm directions so despatched are countermanded; or

(*c*) if all the goods are not imported within the time specified in the licence,

notify the Collector in writing accordingly.

(2.) In the last preceding sub-regulation the term "Collector" means the Collector at the port at which the licence was granted.

Additional information.

9. Every applicant for a licence shall supply to a licensing officer such information additional to that required in accordance with the form of application as the licensing officer requires.

Licences.

10. The Minister may grant a licence in respect of all the goods included in an application made in accordance with these Regulations or in respect of part only of such goods or may refuse to grant a licence.

Terms and conditions of licences.

11.—(1.) The Minister may grant any licence subject to such terms and conditions as he approves or determines.

(2.) The Minister may vary or modify the terms and conditions of any licence and may order that a licence granted free from terms and conditions shall be subject to such terms and conditions as he determines.

Revocation of licences.

12. The Minister may revoke any licence.

Licences not transferable.

13. A licence shall not be transferable.

Delegation.

14.—(1.) The Minister may, by writing under his hand, delegate to any licensing officer all or any of his powers of granting, refusing to grant and revoking licences and of approving, determining, varying and modifying the terms and conditions of licences, so that the delegated powers may be exercised by the delegate.

(2.) An appeal shall lie to the Minister from any decision of a licensing officer in pursuance of any power delegated to him by the Minister.

(3.) The decision of the Minister in any such appeal shall be final.

(4.) Every delegation under this regulation shall be revocable at will, and no delegation shall prevent the exercise of any power by the Minister.

Exceptions.

15.—(1.) The Minister may except from the application of these Regulations any goods or any classes of goods.

(2.) Without prejudice to the generality of sub-regulation (1.) of this regulation, the exception of any goods from the application of these Regulations may be limited to—

(*a*) goods produced or manufactured in any particular country or countries specified by the Minister;

(*b*) any goods to be imported in a manner, or at or within a time, specified by the Minister;

(*c*) any goods to be used for a particular purpose specified by the Minister.

(3.) The Minister may vary or revoke any exception made in pursuance of this regulation.

Security.

16.—(1.) Before any licence is granted the applicant for the licence shall, if required so to do by the licensing officer, give security that he will order and import the goods in accordance with the particulars contained in the application, and will comply with the terms and conditions (if any) to which the licence is subject and with the requirements of these Regulations.

(2.) Any security given in respect of a licence shall, unless the licensing officer otherwise determines, be for a sum equal to twice the estimated value of the goods to which the licence relates.

By Authority: A. J. Arthur, Commonwealth Government Printer, Canberra.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 69
C. A. No. 59-C-1847

STATUTORY RULES

1956. No. 93.

REGULATIONS UNDER THE CUSTOMS ACT 1901-1954.*

I, THE GOVERNOR-GENERAL, in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *Customs Act* 1901-1954.

Dated this fourteenth day of December, 1956.

W. J. SLIM
Governor-General.

By His Excellency's Command,

DENHAM HENTY
Minister of State for Customs and Excise.

CUSTOMS (IMPORT LICENSING) REGULATIONS.

1. These Regulations may be cited as the Customs (Import Licensing) Regulations. Citation.

2. The Customs (Import Licensing) Regulations, being Statutory Rules 1939, No. 163, are repealed. Repeal.

3.—(1.) A licence which was granted under the Regulations repealed by the last preceding regulation and was in force immediately before the commencement of these Regulations, shall be deemed to be a licence granted under these Regulations and the conditions and requirements, or the conditions or requirements, to which the licence was subject shall be deemed to be the conditions and requirements, or the conditions or requirements, as the case may be, to which the licence is subject under these Regulations. Licences granted, and applications and exceptions made, before commencement of these Regulations.

(2.) An application for a licence, under the Regulations repealed by the last preceding regulation which has not been granted or refused before the commencement of these Regulations shall be deemed to have been made under these Regulations.

(3.) Where any goods were, immediately before the commencement of these Regulations, excepted from the application of the Regulations repealed by regulation 2 of these Regulations, those goods shall, subject to sub-regulation (3.) of regulation 17 of these Regulations, be deemed to be excepted from the application of these Regulations.

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* Notified in the *Commonwealth Gazette* on 14th December, 1956.

3356/57.—PRICE 3D.

Definitions.

4. In these Regulations, unless the contrary intention appears—

"licence" means a licence granted or deemed to have been granted under these Regulations which is in force;

"licensing officer" means an officer authorized by the Minister to act as a licensing officer for the purposes of these Regulations.

Application of Regulations.

5.—(1.) The provisions of these Regulations are in addition to the provisions of any other law of the Commonwealth relating to the importation of goods into Australia.

(2.) The grant of a licence under these Regulations to import goods into Australia or the exception of goods from the application of these Regulations shall not absolve a person from the obligation to comply with any other law relating to the importation of those goods.

Delegation.

6.—(1.) The Minister may, in relation to a matter or a class of matters, or to a State or part of the Commonwealth, by writing under his hand, delegate to a licensing officer any of his powers and functions under these Regulations (except this power of delegation).

(2.) A power or function so delegated may be exercised or performed by the delegate with respect to the matter or to the matters included in a class of matters, or with respect to the State or part of the Commonwealth specified in the instrument of delegation.

(3.) A delegation under this regulation is revocable at will and does not prevent the exercise of a power or the performance of a function by the Minister.

Prohibition of the importation of goods.

7. The importation of any goods (not being goods which are excepted from the application of these Regulations) is prohibited unless—

(*a*) a licence under these Regulations to import the goods is in force; and

(*b*) the conditions and restrictions (if any) to which the licence is subject are complied with.

Application for licence.

8.—(1.) An application for a licence under these Regulations shall be in accordance with such form as the Minister directs.

(2.) The application shall be delivered, in such manner as the Minister directs, to the Collector at the port at which it is proposed to import the goods.

Licence not to be applied for unless goods ordered.

9. Except—

(*a*) where the Minister otherwise approves; or

(*b*) where goods in respect of which the licence is applied for have been exported at the date of the application for the licence,

a person shall not apply for a licence to import any goods unless he intends forthwith after the grant of the licence to give to the overseas supplier firm directions for the exportation to Australia of the goods.

Additional information.

10. An applicant for a licence shall supply to a licensing officer such information additional to that required to be supplied in the form of application as the licensing officer requires.

Grant of licence.

11. The Minister may—

(*a*) grant a licence in respect of all the goods included in an application for a licence;

(*b*) grant a licence in respect of part only of the goods so included; or

(*c*) refuse to grant a licence.

Conditions of licences.

12.—(1.) The Minister may grant a licence subject to such conditions or requirements to be complied with by the person to whom the licence is granted, either before or after the importation of the goods in respect of which the licence is granted, as are specified in the licence.

(2.) After the grant of a licence under these Regulations, the Minister may, by notice in writing—

(*a*) where the licence was granted subject to conditions and requirements or conditions or requirements—

(i) vary any or all of those conditions or requirements, or

(ii) direct that the licence be subject to conditions or requirements additional to those conditions or requirements; or

(*b*) where the licence was granted without being subject to conditions or requirements—direct that the licence be subject to specified conditions or requirements,

and the conditions or requirements as so altered or directed are the conditions or requirements to which the licence is subject.

(3.) A copy of a notice under the last preceding sub-regulation shall be served on the person to whom the licence has been granted.

Notification of directions for exportation to Australia.

13.—(1.) A person to whom a licence is granted shall, except insofar as the Minister otherwise directs—

(*a*) if the firm directions for the exportation to Australia of all of the goods to which the licence relates (other than goods so exported at the date of the grant of the licence) are not despatched to the overseas supplier within one month after that date;

(*b*) if firm directions so despatched are countermanded; or

(*c*) if all the goods are not imported within the time (if any) specified in the licence,

notify the Collector to whom the application for the licence was made in writing accordingly.

(2.) Where a person fails to comply with the last preceding sub-regulation, the licence shall, by force of this sub-regulation, be deemed to have been revoked.

Security.

14. Where a licensing officer so requires, the grant or the continuance in force of a licence shall be subject to the condition that the applicant for, or the holder of, the licence furnishes to the Customs security, in such sum as the licensing officer considers sufficient, for compliance with the *Customs Act* 1901-1954 and for compliance with the conditions or requirements to which the licence is subject.

Revocation of licence.

15. The Minister may revoke a licence.

Licence not transferable.

16. A licence is not transferable.

Exceptions of goods from application of Regulations.

17.—(1.) The Minister may except from the application of these Regulations any goods or any goods included in a class of goods.

(2.) Without limiting the generality of the last preceding sub-regulation, the exception of any goods from the application of these Regulations may be limited to—

(*a*) goods produced or manufactured in a country or countries specified by the Minister;

(*b*) goods to be imported in a manner, or at or within a time, specified by the Minister; or

(*c*) goods to be used for a purpose specified by the Minister.

(3.) The Minister may vary or revoke an exception made in pursuance of this regulation.

Review of decisions by the Minister.

18. A person who is dissatified with a decision of a licensing officer given in the exercise of a power which has been delegated to him under these Regulations by the Minister may request the Minister to review the decision, and, upon such a request being made, the Minister may affirm, vary or revoke the decision.

Decision of the Minister to be final.

19. The decision of the Minister on a matter arising under these Regulations is final.

By Authority: A. J. Arthur, Commonwealth Government Printer, Canberra.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 70
C. A. No. 59-C-1847

THE COMMONWEALTH OF AUSTRALIA.

CUSTOMS TARIFF, 1933-1958.*

An Act relating to Duties of Customs.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Customs Tariff* 1933–1958.* Short title. Short title amended: No. 32, 1918, s. 2.

2. The *Customs Act* 1901–1930 shall be incorporated and read as one with this Act. Incorporation.

* The *Customs Tariff* 1933–1958 comprises the *Customs Tariff* 1933, as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table:—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
Customs Tariff 1933	1933, No. 27	4th December, 1933 ..	14th October, 1932
Customs Tariff (No. 2) 1933 ..	1933, No. 31	5th December, 1933 ..	5th October, 1933
Customs Tariff 1936	1936, No. 14	27th May, 1936 ..	29th November, 1935
Customs Tariff (No. 2) 1936 ..	1936, No. 68	5th December, 1936 ..	23rd May, 1936
Customs Tariff (No. 3) 1936 ..	1936, No. 76	7th December, 1936 ..	1st January, 1937 (*See Gazette*, 1936, p. 2278)
Customs Tariff (No. 4) 1936 ..	1936, No. 80	7th December, 1936 ..	1st January, 1937 (*See Gazette*, 1936, p. 2278)
Customs Tariff 1938	1938, No. 3	6th June, 1938 ..	9th December, 1937
Customs Tariff (No. 2) 1938 ..	1938, No. 67	10th December, 1938..	18th November, 1938
Customs Tariff (No. 3) 1938 ..	1938, No. 68	10th December, 1938..	22nd September, 1938
Customs Tariff (No. 4) 1938 ..	1938, No. 69	10th December, 1938..	30th December, 1938 (*See Gazette*, 1938, p. 2838)
Customs Tariff 1939	1939, No. 2	20th May, 1939 ..	8th December, 1938
Customs Tariff (No. 2) 1939 ..	1939, No. 28	26th September, 1939	4th May, 1939
Customs Tariff (No. 3) 1939 ..	1939, No. 53	13th December, 1939..	9th September, 1939
Customs Tariff (No. 4) 1939 ..	1939, No. 56	15th December, 1939..	15th September, 1939
Customs Tariff (No. 5) 1939 ..	1939, No. 59	15th December, 1939..	23rd September, 1939
Customs Tariff (No. 6) 1939 ..	1939, No. 62	15th December, 1939..	1st January, 1940 (*See Gazette*, 1939, p. 2773)
Customs Tariff (No. 7) 1939 ..	1939, No. 64	15th December, 1939..	1st December, 1939
Customs Tariff 1948	1948, No. 1	27th April, 1948 ..	15th November, 1946
Customs Tariff (No. 2) 1948 ..	1948, No. 5	27th April, 1948 ..	15th November, 1947
Customs Tariff (No. 3) 1948 ..	1948, No. 9	27th April, 1948 ..	19th November, 1947
Customs Tariff (No. 4) 1948 ..	1948, No. 12	27th April, 1948 ..	19th February, 1948
Customs Tariff (No. 5) 1948 ..	1948, No. 92	21st December, 1948..	9th September, 1948
Customs Tariff 1949	1949, No. 76	28th October, 1949 ..	8th September, 1949
Customs Tariff (No. 2) 1949 ..	1949, No. 79	28th October, 1949 ..	13th October, 1949
Customs Tariff 1950	1950, No. 22	11th November, 1950	12th May, 1950
Customs Tariff (No. 2) 1950 ..	1950, No. 32	7th December, 1950 ..	9th June, 1950
Customs Tariff (No. 3) 1950 ..	1950, No. 60	14th December, 1950..	27th October, 1950
Statute Law Revision Act 1950	1950, No. 80	16th December, 1950..	31st December, 1950
Customs Tariff 1952	1952, No. 82	6th November, 1952 ..	26th September, 1952
Customs Tariff 1953	1953, No. 76	10th December, 1953..	25th November, 1953
Customs Tariff 1954	1954, No. 3	20th April, 1954 ..	16th February, 1954
Customs Tariff (No. 2) 1954 ..	1954, No. 4	20th April, 1954 ..	7th April, 1954
Customs Tariff 1956	1956, No. 15	12th May, 1956 ..	15th March, 1956
Customs Tariff (No. 2) 1956 ..	1956, No. 58	13th September, 1956	17th May, 1956
Customs Tariff (No. 3) 1956 ..	1956, No. 62	13th September, 1956	14th June, 1956
Customs Tariff (No. 4) 1956 ..	1956, No. 86	8th November, 1956 ..	31st August, 1956
Customs Tariff 1957	1957, No. 53	20th November, 1957	23rd May, 1957
Customs Tariff (No. 2) 1957 ..	1957, No. 54	20th November, 1957	23rd May, 1957
Customs Tariff (No. 3) 1957 ..	1957, No. 81	12th December, 1957..	4th September, 1957
Customs Tariff (No. 4) 1957 ..	1957, No. 84	12th December, 1957..	18th October, 1957
Customs Tariff 1958	1958, No. 15	21st May, 1958 ..	21st March, 1958
Customs Tariff (No. 2) 1958 ..	1958, No. 20	21st May, 1958 ..	18th June, 1958

630/58.—PRICE 5s. 9d.

Definitions.

Amended by No. 79, 1949, s. 2; No. 80, 1950, s. 7; and No. 28, 1958, s. 2.

3. In this Act, except where otherwise clearly intended—

"British non-self-governing colony" includes British Protectorates, the Trust Territory of Tanganyika and so much of the Trust Territory of the Cameroons as is administered by His Majesty's Government in the United Kingdom;

"item" includes portion of an item;

"proclaimed duty" means a duty which, in accordance with the Schedule, may commence on a date to be fixed by proclamation;

"the Schedule" means the Schedule to this Act;

"the Tariff Board" means the Tariff Board appointed in pursuance of the *Tariff Board Act* 1921–1929.

Headings of Divisions not to affect interpretation.

4. The headings of the respective Divisions in the Schedule are used solely for convenience of classification, and shall not in any way affect the interpretation of the Tariff.

Time of imposition of duties.

5.*—(1.) The time of the imposition of the Duties of Customs imposed by this Act, except in respect of items in the Schedule in respect of which a later date is specified, is the fourteenth day of October, One thousand nine hundred and thirty-two, at nine o'clock in the forenoon, reckoned according to standard time in the Territory for the Seat of Government, and this Act shall be deemed to have come into operation at that time.

(2.) The time of the imposition of the Duties of Customs imposed by this Act in respect of items in the Schedule in respect of which a date later than the fourteenth day of October, One thousand nine hundred and thirty-two is fixed, is the later date so fixed, at nine o'clock in the forenoon, reckoned according to standard time in the Territory for the Seat of Government.

Imposition of duties.

6. Each Duty of Customs specified in the Schedule in relation to an item contained therein, is hereby imposed in accordance with the Schedule as from such time as is specified in the last preceding section as the time of imposition of the Duty of Customs in respect of that item, and that duty shall be deemed to have been imposed at that time, and shall be charged, collected and paid to the use of the King for the purposes of the Commonwealth on all goods, dutiable under that item in the Schedule, imported into Australia after the time when that duty is deemed to have been imposed, or before that time if not entered for home consumption until after that time.

* For the times of the imposition of Duties of Customs imposed by amending Acts, *see* Acts No. 31, 1933, s. 3; No. 14, 1936, s. 6; No. 68, 1936, s. 4; No. 76, 1936, s. 3; No. 80, 1936, s. 3; No. 3, 1938, s. 3; No. 67, 1938, s. 4; No. 68, 1938, s. 3; No. 69, 1938, s. 3; No. 2, 1939, s. 3; No. 28, 1939, s. 3; No. 53, 1939, s. 3; No. 56, 1939, s. 3; No. 59, 1939, s. 3; No. 62, 1939, s. 3; No. 64, 1939, s. 3; No. 1, 1948, s. 3; No. 5, 1948, ss. 3 and 4; No. 9, 1948, s. 3; No. 12, 1948, s. 3; No. 92, 1948, s. 3; No. 76, 1949, s. 3; No. 79, 1949, s. 5; No. 22, 1950, s. 3; No. 32, 1950, s. 3; No. 60, 1950, s. 3; No. 82, 1952, s. 3; No. 76, 1953, s. 3; No. 3, 1954, s. 3; No. 4, 1954, s. 3; No. 15, 1956, s. 3; No. 58, 1956, s. 3; No. 62, 1956, s. 3; No. 86, 1956, s. 3; No. 53, 1957, s. 3; No. 54, 1957, s. 3; No. 81, 1957, s. 3; No. 84, 1957, s. 3; and No. 15, 1958, s. 3.

* * * * * * * * *

Section 7 repealed by No. 80, 1958, s. 7.

Application of British Preferential Tariff to United Kingdom.

8.—(1.) The rates of duty set out in the Schedule, in the column headed "British Preferential Tariff", shall, subject to this section, apply to goods the produce or manufacture of the United Kingdom.

(2.) The rates of duty set out in the Schedule, in the column headed "British Preferential Tariff", shall not apply to any goods unless the goods—

(*a*) comply with the laws and statutory regulations for the time being in force affecting the grant of British preference; and

(*b*) have been shipped in the United Kingdom to Australia, and have not been transhipped, or, unless, if the goods are transhipped, it is proved to the satisfaction of the Collector that the intended destination of the goods, when originally shipped from the United Kingdom, was Australia.

Application of British Preferential Tariff to certain British countries.

Substituted by No. 20, 1958, s. 3.

9.*—(1.) The Minister may, by order published in the *Gazette*, declare that, from a specified time and date, the rate of duty set out in the column headed "British Preferential Tariff" in the Schedule, or in the Schedule as proposed to be amended by a Customs Tariff alteration proposed in the Parliament, in relation to a specified item in the Schedule, or in the Schedule as so proposed to be amended, as the case may be, shall apply to goods, or to specified goods, included in that item that are the produce or manufacture of—

(*a*) a specified British non-self-governing colony; or

(*b*) a specified part of the Queen's dominions, being a place that was, on the fifteenth day of October, One thousand nine hundred and forty-six, a British non-self-governing colony.

(2.) The Minister shall not make an order under this section that would have the effect of applying the rate of duty set out in the column headed "British Preferential Tariff" in the Schedule in relation to sub-item (A) of item 52 in the Schedule to bananas the produce of a country other than Fiji.

Application of Intermediate Tariff.

Substituted by No. 20, 1958, s. 3.

9A.* The Minister may, by order published in the *Gazette*, declare that, from a specified time and date, the rate of duty set out in the column headed "Intermediate Tariff" in the

* Section 5 of the *Customs Tariff (No. 2) 1958* reads as follows :—

"5. A Proclamation made under, or having effect for the purposes of, section nine or nine A of the Principal Act, or a Proclamation made under Customs Tariff Proposals introduced into the House of Representatives applying rates of duty set out in the column headed 'British Preferential Tariff' or 'Intermediate Tariff' in the Schedule to those Proposals, being a Proclamation in force immediately before the commencement of this Act, continues in force, subject to section nine B of the Principal Act as amended by this Act, as if the Proclamation were an order made by the Minister under the Principal Act as amended by this Act."

Schedule, or in the Schedule as proposed to be amended by a Customs Tariff alteration proposed in the Parliament, in relation to a specified item in the Schedule, or in the Schedule as so proposed to be amended, as the case may be, shall apply to goods, or to specified goods, included in that item that are the produce or manufacture of a specified country.

Orders under sections 9 and 9A. Inserted by No. 20, 1958, s. 3.

9B.—(1.) Subject to the next succeeding sub-section, an order under either of the last two preceding sections has effect according to its tenor.

(2.) Where an order under either of the last two preceding sections specifies—

(*a*) an item that, by a Customs Tariff alteration proposed in the Parliament, is proposed to be inserted in the Schedule, either in lieu of an item in the Schedule or otherwise; or

(*b*) an item in the Schedule that, by such a Customs Tariff alteration, is proposed to be amended,

the order, in relation to that item, shall, if the Schedule is amended by the insertion or amendment, as the case may be, of that item, have effect, and be deemed to have so had effect from the time and date specified in the order, for the purposes of the Schedule as so amended, but shall not otherwise have effect in relation to that item.

(3.) The Minister may, by order published in the *Gazette*, vary, from a specified time and date, an order under either of the last two preceding sections (including such an order as varied by order under this section), and an order so varied has effect as varied, and, in the case of an order to which the last preceding sub-section applies, shall be deemed to have had effect as varied, from the time and date so specified.

(4.) The Minister may, by order published in the *Gazette*, revoke, from a specified time and date, an order under either of the last two preceding sections or under the last preceding sub-section, and an order so revoked ceases to have effect, and, in the case of an order to which sub-section (2.) of this section applies, shall be deemed to have ceased to have had effect, from the time and date so specified.

(5.) The date specified in an order under this Act shall be a date not earlier than the date on which the order is published in the *Gazette*.

(6.) Orders under this Act shall not be deemed to be Statutory Rules within the meaning of the *Rules Publication Act* 1903-1939.

(7.) The provisions of sections forty-eight and forty-nine of the *Acts Interpretation Act* 1901-1957 (other than paragraphs (*a*) and (*b*) of sub-section (1.), sub-section (2.) and sub-section (6.) of that first-mentioned section) apply, by force of this section, to an order under this Act in like manner as those provisions apply to a regulation.

(8.) Where an order under this Act is disallowed, or is deemed to have been disallowed, under a provision of the *Acts Interpretation Act* 1901-1957 as applied by the last preceding sub-section, the disallowance of the order has effect as if that order had been revoked by an order under sub-section (4.) of this section from the time and the date of the disallowance.

Power to fix a date for proclaimed duty.

10.—(1.) The Governor-General may by proclamation fix a date as the date on which a proclaimed duty shall commence.

(2.) Any proclamation issued prior to the commencement of this Act, in accordance with the Tariff, fixing a date on which any duty shall commence shall be deemed to have been lawfully issued.

Application of General Tariff. Substituted by No. 14, 1936, s. 3.

11. The rates of duty set out in the Schedule to this Act, in the column headed "General Tariff", shall apply to all goods to which the rates set out in neither the column headed "British Preferential Tariff" nor the column headed "Intermediate Tariff" apply.

Deferred duties. Sub-section (1.) substituted by No. 28, 1958, s. 4.

12.—(1.) Where a deferred duty on any goods is provided in the Schedule, the question whether the deferred duty should or should not operate on and after the date to which it has been deferred shall be referred to the Tariff Board in accordance with the *Tariff Board Act* 1921–1958 for inquiry and report.

(2.) In making its inquiry and report the Board shall consider whether the goods in respect of which the deferred duty is provided are being made or produced in Australia or will be so made or produced on, or immediately after, the date to which the duty has been deferred—

(*a*) in reasonable quantities;

(*b*) of satisfactory quality; and

(*c*) at a reasonable price having regard, among other things, to the probable economic effect of the imposition of the deferred duty upon other industries concerned, and upon the community in general.

Amended by No. 20, 1958, s. 4.

(3.) The Minister may, upon the making by the Tariff Board of its report in respect of the deferred duty, by notice published in the *Gazette* defer the duty to such date as is specified in the notice, and may so act in respect of all, or any portion of, the goods, specified in the notice, in respect of which a deferred duty is provided.

Substituted by No. 20, 1958, s. 4.

(4.) Where the duty on any goods has been deferred by the Minister, the question whether the duty should or should not operate on and after the date to which it has been deferred shall, before that date, be referred to the Tariff Board in accordance with the *Tariff Board Act* 1921–1958 for inquiry and report and, upon the making by the Tariff Board of its report, the Minister may, by notice published in the *Gazette*, again defer the duty to such date as is specified in the notice.

(5.) In this section "deferred duty" means a duty which, in relation to any goods, is expressly described in the Schedule as a deferred duty.

Sections 13, 14, 15 and 16 repealed by No. 80, 1950, s. 7.

Saving.

17. Nothing in this Act shall affect the operation of the *Customs Tariff* (*New Zealand Preference*) 1922–1926, the *Customs Tariff* (*New Zealand Preference*) 1922 (No. 2), the *Customs Tariff* (*Papua and New Guinea Preference*) 1926, the *Customs Tariff* (*New Zealand Preference*) 1928 or the *Customs Tariff* (*Canadian Preference*) 1931.*

THE SCHEDULE.†

THE CUSTOMS TARIFF.

(1) All imitations to be dutiable at the rate chargeable on the goods they imitate, unless such rate is less than the rate which would otherwise be chargeable on the imitations.

(2) "Proof" or "Proof Spirit" means spirit and gazetted substitutes therefor of a strength equal or equivalent to that of pure ethyl alcohol compounded with distilled water so that the resultant mixture at a temperature of 60 degrees Fahrenheit has a specific gravity of 0.91976 as compared with that of distilled water at the same temperature.

* Section 4 of the *Customs Tariff* (*No.* 2) 1933 reads as follows:—
"4. Nothing in this Act shall affect the operation of the *Customs Tariff* (*New Zealand Preference*) 1922–1926, the *Customs Tariff* (*New Zealand Preference*) 1922 (No. 2) or any Acts amending or in substitution for those Acts."

† The Schedule has been amended by each of the Acts specified in the table at the foot of page 1 except the *Customs Tariff* (*No.* 2) 1958.

(3) The term "Iron" includes Steel.

(4) Unless otherwise expressly provided for in the Tariff, goods manufactured from hair or containing hair shall be dutiable under the Tariff Item which would be applicable to those goods had they been manufactured from wool or contained wool.

(5) "N.E.I." means "not elsewhere included".

(6) "Departmental By-law" means By-law made by the Minister, and published in the *Gazette*.

(7) Unless the Tariff otherwise provides or the Minister otherwise directs, any goods composed of two or more materials shall be deemed for the purpose of classification to be composed wholly of the material of chief value in the goods, provided that when the respective materials are of equal value the goods shall be deemed for the aforesaid purpose to be composed wholly of the material that would make the goods liable to the higher or highest rate of duty.

(8) Whenever any goods are composed of two or more separate parts any part though imported by itself shall, if so directed by the Minister, be dealt with under the item applicable to the complete goods.

(9) "Non-spirituous" means free from spirit or containing not more than two per cent. of proof spirit.

(10) "Spirituous" means containing more than two per cent. of proof spirit.

(11) Whenever goods are composed of two or more separate articles, even though such articles are specifically mentioned in the Tariff, the Minister may classify the goods under such item or items as he directs.

(12) (*a*) Mechanical driving units and apparatus for transmitting power from such driving units to the driven units, when incorporated in or forming part of machines, machinery or machine tools, shall not, unless the Tariff specifically so directs, be dutiable under the Tariff Item applicable to the machines, machinery or machine tools in which they are incorporated or of which they form a part, but shall be dutiable under the Tariff Item or Tariff Items applicable respectively to similar mechanical driving units and to similar apparatus for transmitting power from such driving units to the driven units, when not incorporated in or forming part of machines, machinery or machine tools.

(*b*) Nothing in the last preceding paragraph shall apply to mechanical driving units or to apparatus for transmitting power from such driving units to the driven units, when incorporated in or forming part of machines, machinery or machine tools to which the Minister directs, by notice published in the *Gazette*, that it shall not apply.

(*c*) For the purposes of the last two preceding paragraphs, the expression "mechanical driving units" means any apparatus or appliance producing motive power and operated by means of steam, oil, electricity, petrol, air, water, alcohol or any other liquid or gas, and includes all devices for regulating starting or controlling such mechanical driving units, whether such devices be incorporated in or form part of the mechanical driving units or the driven units.

(13) Unless the Tariff otherwise expressly provides, or the Minister otherwise directs, the term "artificial silk" shall include synthetic fibres made from substances having either a cellulosic or protein base and synthetic fibres made from substances produced by either or both of the chemical processes known as polymerisation and condensation.

THE SCHEDULE—*continued.*

IMPORT DUTIES—*continued.*

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
Division VI.—Metals and Machinery—*continued.*			
179.—*continued.*			
(E) Electric Fittings not containing metal to be dutiable according to material.			
(F) Magnetos, viz.:—			
(1) Single cylinder (other than the rotating armature type fitted with variable timing mechanism, the flywheel type or the trip type) - - ad val.	15 per cent.	27½ per cent.	32½ per cent.
(2) Other - - - ad val.	Free	7½ per cent.	7½ per cent.
(G) Motors and speed controls, combined or separate, of the types used with domestic type electric sewing machines including lighting attachments (known as needlelights), imported with and for use therewith - ad val.	22½ per cent.	35 per cent.	50 per cent.
(H) Automatic voltage regulators:—			
(1) Motor vehicle type—			
(*a*) Three unit type for 6 volt or 12 volt systems - ad val.	27½ per cent.	40 per cent.	40 per cent.
(*b*) Other - - ad val.	Free	7½ per cent.	7½ per cent.
(2) Other - - - ad val.	Free	12½ per cent.	12½ per cent.
180. Electrical and Gas Appliances, viz.:—			
(A) Telephone and Telegraph, viz.:—			
(1) (*a*) (1) Handset telephones provided suitably equivalent handset telephones the produce or manufacture of Australia are not reasonably available and parts of handset telephones, as prescribed by Departmental By-laws - ad val.	Free	7½ per cent.	7½ per cent.
(2) Handset telephones n.e.i.; bell sets for telephones; parts n.e.i. of handset telephones and of bell sets for telephones ad val.	12½ per cent.	37½ per cent.	42½ per cent.
(*b*) Telephones n.e.i.; telephone distributing boards; telephone appliances n.e.i. - - ad val.	Free	17½ per cent.	17½ per cent.
(2) Keys (including radio); magneto bells and parts therefor, whether imported separately or mounted with a key or switch; indicators or drops with or without shutters; relays; bell coils; impedance and resistance coils and spools; lamp sockets for switchboards; protective apparatus; cable boxes, unprotected; devices for junctioning telephone and telegraph wires and cables; ear caps and mouth pieces; switchboards - ad val.	22½ per cent.	47½ per cent.	52½ per cent.
(B) (1) Gas meters of the consumers' type - ad val.	22½ per cent.	37½ per cent.	47½ per cent.
(2) Parts of gas meters of the consumers' type—			
(*a*) As prescribed by Departmental By-laws - - - ad val.	Free	7½ per cent.	7½ per cent.
(*b*) N.E.I. - - - ad val.	10 per cent.	22½ per cent.	32½ per cent.

THE SCHEDULE—*continued.*

IMPORT DUTIES—*continued.*

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
Division VI.—Metals and Machinery—*continued.*			
180.—*continued.*			
(c) (1) Electroliers; gasaliers; chandeliers; pendants; brackets - - - ad val.	22½ per cent.	45 per cent.	52½ per cent.
(2) Gas cooking and heating appliances, including gas ranges, viz.:—			
(*a*) Water heaters - - ad val.	17½ per cent.	47½ per cent.	52½ per cent.
(*b*) Other - - - ad val.	17½ per cent.	37½ per cent.	42½ per cent.
(D) Filament lamps—			
(1) Of the types ordinarily used in motor vehicles for lighting purposes -	Free	Free	Free
(2) Other, for lighting or heating purposes per lb.	1s.	2s. 6d.	4s.
(E) Wireless Receivers, parts thereof, and accessories therefor, viz.:—			
(1) Chargers, Battery, exceeding 1 ampere and up to and including 5 amperes each	*15s.	*24s.	*26s. 6d.
(2) Condensers, fixed mica - each	*3d.	*4d.	*4½d.
(3) Articles for tuning devices, viz.:—			
(*a*) Dials complete - per unit	*2s.	*2s. 6d.	*2s. 8d.
(*b*) Dial or Scale Assembly per unit	*6d.	*9d.	*9½d.
(*c*) Drives, ratio reducing per unit	*1s. 6d.	*1s. 9d.	*1s. 10½d.
(4) Resistors, fixed - - each	*¾d.	*1d.	*1¼d.
(5) Rheostats, potentiometers, variable resistances, volume controls and tone controls of types incorporated in wireless receivers - each	*4d.	*6¾d.	*6¾d.
(6) Sockets, valve - - - each	*2d.	*3½d.	*4d.
(7) Transformers, audio and radio - each	*1s. 6d.	*2s. 6d.	*2s. 9d.
(8) Combined power transformers and chokes or any device for eliminating "AB," "BC" or "ABC" batteries, such as power packs and similar devices, whether imported separately or incorporated in a wireless receiving set - - each	†15s.	†25s.	†26s. 6d.
or, as to all the goods covered by paragraphs (1) to (8) of sub-item (E) the following rates if same return a higher duty, viz.:— - ad val.	27½ per cent.	45 per cent.	50 per cent.
(9) Choke coils suitable for use in connexion with battery eliminating devices - - - each	3s. 9d.	10s.	10s.
or ad val.	27½ per cent.	45 per cent.	52½ per cent.
whichever rate returns the higher duty.			
(10) Condensers, variable, of capacities exceeding .0001 microfarad but not exceeding .001 microfarad—			
(*a*) With gang or drum control—per each condenser contained therein - -	1s. 1½d.	2s. 7½d.	3s.
(*b*) Without gang or drum control each	1s. 1½d.	2s. 7½d.	3s.
(11) Condensers, variable, midget, of .0001 microfarad capacity or less each	9d.	1s. 3d.	1s. 6d.

* *See* provision after paragraph (8) of this sub-item for alternative *ad valorem* rates.
† *See* provision after this paragraph for alternative *ad valorem* rates.

THE SCHEDULE—*continued.*

IMPORT DUTIES—*continued.*

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
Division VI.—Metals and Machinery—*continued*			
180.—*continued.*			
(E)—*continued.*			
(12) Loudspeakers and parts thereof:—			
(*a*) Loudspeakers including transformers - - each	7s. 6d.	10s.	12s. 6d.
(*b*) Parts of loudspeakers imported other than in complete loudspeakers, viz.:—			
(1) Field coils - each	1s. 6d.	2s. 6d.	3s.
(2) Field coil cores each	6d.	1s.	1s. 3d.
(3) Field coil housings each	9d.	1s. 3d.	1s. 6d.
(4) Cones with or without voice coils each	11d.	1s. 5d.	1s. 9d.
(5) Cone housings each	1s. 3d.	1s. 9d.	2s. 3d.
(6) N.E.I., other than transformers ad val.	27½ per cent.	45 per cent.	47½ per cent.
Provided however that in the case of combinations of any of the above-mentioned parts duty shall be payable on such combinations as though the parts were imported separately.			
(13) Transformers, power - each	7s. 6d.	12s. 6d.	15s.
or as to all the goods covered by paragraphs (10) to (13) of sub-item (E) with the exception of the goods covered by clause (6) of sub-paragraph (*b*) of paragraph (12) the following rates if same return a higher duty, viz.:— - - - - - ad val.	27½ per cent.	45 per cent.	47½ per cent.
(14) Headphones; Parts n.e.i. of wireless receivers, other than cabinets ad val.	27½ per cent.	45 per cent.	50 per cent.
(15) Wireless Receiving Sets wholly assembled, partly assembled, or unassembled, excluding cabinets, cathode ray tubes (picture tubes), valves, loudspeakers, headphones, batteries or any device for eliminating batteries—			
Per valve socket excluding sockets for valves forming part of any battery eliminating device - -	9s. 3d.	24s. 10½d.	25s.
or ad val.	27½ per cent.	52½ per cent.	52½ per cent.
whichever rate returns the higher duty.			
Provided—(1) In the absence of valve sockets the sets shall be charged duty at the above rates on the basis of the number of valves for which they are constructed or designed.			
(2) In the instance of sets constructed or adapted for use with multiple purpose valves, the sets shall be charged duty equal to that payable on sets having an equal number of unit stages using unit function valves.			

THE SCHEDULE—*continued.*

IMPORT DUTIES—*continued.*

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
Division VI.—Metals and Machinery—*continued.*			
180.—*continued.*			
(E)—*continued.*			
(16) Wireless Receiving Sets and Gramophones combined, excluding cabinets, cathode ray tubes (picture tubes), valves, loudspeakers, headphones, batteries or any device for eliminating batteries - each	15s.	25s.	25s.
and in addition per valve socket excluding sockets for valves forming part of any battery eliminating device - - - - -	9s. 3d.	24s. 10½d.	25s.
or as an alternative to the cumulative fixed rates provided above ad val.	27½ per cent.	52½ per cent.	52½ per cent.
whichever rate returns the higher duty.			
Provided—(1) In the absence of valve sockets the combined sets shall be charged duty at the above rates on the basis of the number of valves for which they are constructed or designed.			
(2) In the instance of combined sets constructed or adapted for use with multiple purpose valves, the combined sets shall be charged duty equal to that payable on combined sets having an equal number of unit stages using unit function valves.			
(F) N.E.I. not included under item 192 ad val.	17½ per cent.	..	42½ per cent.
(G) Storage Batteries and parts thereof, viz.:—			
(1) Storage Batteries for wireless receiving sets, whether imported separately or incorporated in or forming part of a wireless receiving set - ad val.	32½ per cent.	..	62½ per cent.
(2) Storage batteries suitable for use (otherwise than for propulsion purposes) in motor vehicles (other than motor cycles) or electric trolley buses, whether imported separately or incorporated in or forming part of any goods covered by items 359 (D) and 359 (H) - - - ad val.	22½ per cent.	50 per cent.	62½ per cent.
(3) Composition parts including containers for storage batteries for wireless receiving sets and for storage batteries suitable for use in motor vehicles (other than motor cycles) otherwise than for propulsion purposes - - - per lb.	1½d.	..	2½d.
and ad val.	27½ per cent.	..	52½ per cent.
(4) Alkaline batteries - ad val.	17½ per cent.	40 per cent.	42½ per cent.
(H) Sparking plugs whether imported separately or incorporated in or forming part of any goods covered by items 177 (B) (3) (*a*) and 359 (D) - - - - - each	9d.	1s.	1s. 1d.
or ad val.	27½ per cent.	45 per cent.	50 per cent.
whichever rate returns the higher duty.			

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
Division VI.—Metals and Machinery—*continued.*			
180.—*continued.*			
(I) Dry batteries and dry cells of all descriptions whether imported separately or incorporated in any article or appliance - - per lb. or ad val. whichever rate returns the higher duty.	2d. 17½ per cent.	5½d. 37½ per cent.	5½d. 42½ per cent.
(J) Wall, Stand or Table Lamps, but not including lamps having glass shades and glass bases ad val.	22½ per cent.	..	47½ per cent.
(K) Electrical fittings and accessories, viz.:—Flush plates, connectors, ceiling roses, moulded lamp-holders (with or without switches), adapters, wall sockets, wall plugs and wall plug tops - - - - ad val.	22½ per cent.	45 per cent.	50 per cent.
(L) Condensers, viz.:—			
(1) Electrolytic—			
(*a*) Suitable for operation at voltages exceeding 100 volts - - each or ad val. whichever rate returns the higher duty.	.. 22½ per cent.	7d. 52½ per cent.	7d. 57½ per cent.
(*b*) Other - - - each or ad val. whichever rate returns the higher duty.	.. 22½ per cent.	3d. 52½ per cent.	3d. 57½ per cent.
For the purposes of paragraph (1) of this sub-item each electrolytic condenser, when forming portion of a set of electrolytic condensers or contained, with other electrolytic condensers, in the one housing, shall be charged with duty as a separate unit.			
(2) N.E.I. - - - ad val.	22½ per cent.	45 per cent.	50 per cent.
(M) Registers or Meters, of the type which totals electrical impulses, such as those used in telephone exchanges for recording subscribers' calls and in totalisators - ad val.	22½ per cent.	45 per cent.	50 per cent.
(N) Jacks - - - - ad val.	27½ per cent.	45 per cent.	50 per cent.
(O) Piezo electric quartz plates bars and rods ad val.	12½ per cent.	27½ per cent.	42½ per cent.
181. Electrical Articles and Materials, viz.:—			
(A) (1) (*a*) Covered cable and covered wire, n.e.i.—			
(1) When designed for use at working pressures up to and including 11,000 volts but not including—			
heating cable compensating or extension leads for thermocouples ad val.	10 per cent.	22½ per cent.	22½ per cent.
(2) Other - - - ad val.	Free	7½ per cent.	7½ per cent.
(*b*) (1) Arc lamps n.e.i.; electric vacuum tubes n.e.i.; cathode ray oscilloscopes and oscillographs - ad val.	Free	12½ per cent.	12½ per cent.
(2) Measuring and recording instruments not elsewhere specified ad val.	Free	10 per cent.	12½ per cent.

THE SCHEDULE—*continued.*

IMPORT DUTIES—*continued.*

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
Division VI.—Metals and Machinery—*continued.*			
181.—*continued.*			
(A) (1)—*continued.*			
(*c*) Meters of the moving coil type suitable for mounting on panels, the value for duty of which exceeds 5s. 3d. each and is less than 22s. 9d. each, whether imported separately or forming part of a complete appliance - each	Free	5s.	5s.
and ad val.	..	..	7½ per cent.
Provided that for the purposes of sub-paragraph (*c*) when any electrical appliance incorporates more than one moving coil unit the number of meters upon which duty is payable shall be the number of moving coil units incorporated in the electrical appliance.			
(2) Valves for wireless telegraphy and telephony including rectifying valves - each	3s. 3d.	4s. 6d.	5s.
or ad val.	17½ per cent.	35 per cent.	35 per cent.
whichever rate returns the higher duty.			
(3) Cathode ray tubes (picture tubes) as used in television receiving sets, whether imported separately or otherwise - - each	£11	£11	£11
and ad val.	..	10 per cent.	10 per cent.
(AA) Alternating Current Watt-hour Meters—			
(1) (*a*) Two rate; two rate and three element combined - - ad val.	Free	10 per cent.	12½ per cent.
(*b*) Three element other than two rate ad val.	Free	7½ per cent.	7½ per cent.
(2) Other - - - - each	6s. 8d.	11s. 8d.	13s. 4d.
(B) (1) (*a*) Copper wire (in round, square or other shapes) including stranded or twisted copper wire, whether plain or tinned (but not including weatherproof braided aerial cable prescribed by Departmental By-laws under sub-paragraph (*d*) of this sub-item), viz.:— When covered with cotton only, the covering being impregnated; when covered with paper only or with paper and cotton only, the covering being either impregnated or not - - - ad val.	17½ per cent.	32½ per cent.	40 per cent.
(*b*) Copper strip, whether plain or tinned, when covered with paper only or with cotton only or with paper and cotton only, the covering being either impregnated or not - - ad val.	17½ per cent.	32½ per cent.	40 per cent.
(*c*) Cable and wire when covered with cotton only, but not further treated - ad val.	17½ per cent.	32½ per cent.	40 per cent.
(*d*) Weatherproof braided aerial cable, as prescribed by Departmental By-laws ad val.	12½ per cent.	27½ per cent.	35 per cent.
(2) Cables, telegraph and telephone, paper-insulated lead-covered - - ad val.	17½ per cent.	37½ per cent.	40 per cent.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 71-RE
C. A. No. 59-C-1847

THE COMMONWEALTH OF AUSTRALIA.

CUSTOMS TARIFF (No. 3).

No. 52 of 1960.

An Act relating to Duties of Customs.

[Assented to 19th November, 1960.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title and citation.

1.—(1.) This Act may be cited as the *Customs Tariff (No. 3) 1960*.

(2.) The *Customs Tariff* 1933–1959,* as amended by the *Customs Tariff* 1960,† is in this Act referred to as the Principal Act.

(3.) Section one of the *Customs Tariff (No. 2) 1960*‡ is amended by omitting sub-section (4.).

(4.) The Principal Act, as amended by the *Customs Tariff (No. 2) 1960* and by this Act, may be cited as the *Customs Tariff* 1933–1960.

Commencement.

2. Except as otherwise provided in this Act, this Act shall come into operation on the day on which it receives the Royal Assent.

3.—(1.) The

* Act No. 27, 1933, as amended by No. 31, 1933; Nos. 14, 68, 76 and 80, 1936; Nos. 3, 67, 68 and 69, 1938; Nos. 2, 28, 33, 56, 59, 62 and 64, 1939; Nos. 1, 3, 9, 12 and 92, 1948; Nos. 76 and 79, 1949; Nos. 22, 32, 60 and 80, 1950; No. 82, 1952; No. 76, 1953; Nos. 3 and 4, 1954; Nos. 15, 58, 62 and 86, 1956; Nos. 53, 54, 81 and 84, 1957; Nos. 15, 20 and 37, 1958; and Nos. 21, 22, 62, 63 and 64, 1959.

† Act No. 22, 1960.

‡ Act No. 43, 1960.

F.9855/60.—PRICE 1s. 6d.

Amendment of Tariff in accordance with First Schedule.

3.—(1.) The Schedule to the Principal Act is amended as set out in the First Schedule to this Act and duties of Customs are imposed in accordance with the Schedule to the Principal Act as so amended.

(2.) Subject to the next two succeeding sub-sections, the time of the imposition of the duties of Customs imposed by the last preceding sub-section is the twentieth day of May, One thousand nine hundred and sixty, at nine o'clock in the forenoon, reckoned according to standard time in the Australian Capital Territory, and this section shall be deemed to have come into operation at that time.

(3.) The time of the imposition of the duties of Customs imposed by sub-section (1.) of this section in respect of which a date later than the twentieth day of May, One thousand nine hundred and sixty, is specified in the First Schedule to this Act is, subject to section twelve of the *Customs Tariff* 1933–1960, the later date so specified, at nine o'clock in the forenoon, reckoned according to standard time in the Australian Capital Territory.

(4.) The time of the imposition of the duties of Customs imposed by sub-section (1.) of this section in respect of which a date is required to be fixed by proclamation is the date so fixed, at nine o'clock in the forenoon, reckoned according to standard time in the Australian Capital Territory.

Amendment of Tariff in accordance with Second Schedule.

4.—(1.) The Schedule to the Principal Act as amended by the last preceding section is further amended as set out in the Second Schedule to this Act and duties of Customs are imposed in accordance with the Schedule to the Principal Act as so amended and as so further amended.

(2.) The time of the imposition of the duties of Customs imposed by the last preceding sub-section is the seventeenth day of August, One thousand nine hundred and sixty, at nine o'clock in the forenoon, reckoned according to standard time in the Australian Capital Territory, and this section shall be deemed to have come into operation at that time.

Amendment of Tariff in accordance with Third Schedule.

5.—(1.) The Schedule to the Principal Act as amended by the last two preceding sections is further amended as set out in the Third Schedule to this Act and duties of Customs are imposed in accordance with the Schedule to the Principal Act as so amended and as so further amended.

(2.) The time of the imposition of the duties of Customs imposed by the last preceding sub-section is the ninth day of September, One thousand nine hundred and sixty, at nine o'clock in the forenoon, reckoned according to standard time in the Australian Capital Territory, and this section shall be deemed to have come into operation at that time.

6.—(1.) The

Amendment of Tariff in accordance with Fourth Schedule.

6.—(1.) The Schedule to the Principal Act as amended by the last three preceding sections is further amended as set out in the Fourth Schedule to this Act and duties of Customs are imposed in accordance with the Schedule to the Principal Act as so amended and as so further amended.

(2.) Subject to the next succeeding sub-section, the time of the imposition of the duties of Customs imposed by the last preceding sub-section is the twenty-first day of October, One thousand nine hundred and sixty, at nine o'clock in the forenoon, reckoned according to standard time in the Australian Capital Territory, and this section shall be deemed to have come into operation at that time.

(3.) The time of the imposition of the duties of Customs imposed by sub-section (1.) of this section in respect of which a date later than the twenty-first day of October, One thousand nine hundred and sixty, is specified in the Fourth Schedule to this Act is the later date so specified, at nine o'clock in the forenoon, reckoned according to standard time in the Australian Capital Territory.

THE

THE SCHEDULES.

Section 3.

FIRST SCHEDULE.

AMENDMENTS OF THE SCHEDULE TO THE PRINCIPAL ACT.

IMPORT DUTIES.

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
DIVISION I.—ALE, SPIRITS, AND BEVERAGES.			
17. By inserting in sub-item (A) after the word "Vals" the word ", Vichy,".			
DIVISION V.—TEXTILES, FELTS AND FURS, AND MANUFACTURES THEREOF, AND ATTIRE.			
105. By omitting paragraph (1) of sub-item (D) and inserting in its stead the following paragraph:—			
"(1) (*a*) Woven, wholly of or containing not less than 20 per cent. by weight of man-made fibres, including quilted piece goods containing woven piece goods wholly of or containing not less than 20 per cent. by weight of man-made fibres, but not including— tyre cord fabric, bed tickings, piece goods covered by sub-item (A) (1) (*b*), (A) (3), (D) (2) (*a*) or (F) - per square yard	2s. 6d.	2s. 8½d.	3s. 1½d.
(*b*) Wholly of or containing man-made fibres, but not including piece goods covered by sub-item (A) (1) (*b*), (A) (3), (AA), (D) (1) (*a*), (D) (1) (*c*), (D) (2) (*a*) or (F) - - - per square yard	1½d.	4d.	9d.
(*c*) Tickings, bed, woven, wholly of or containing more than 50 per cent. by weight of man-made fibres, not containing wool - per square yard	2s. 6d.	2s. 8½d.	3s. 1½d.
less ad val.	15 per cent.	15 per cent.	15 per cent.
or per square yard whichever rate returns the higher duty."	1s. 6d.	1s. 8½d.	2s. 1½d.
By omitting paragraph (2) of sub-item (E) and inserting in its stead the following paragraph:—			
"(2) Lace for attire, lace flouncings, millinery nets, dress nets, veilings, tucked linens or cottons, not covered by item 107(c) - - - - ad val.	5 per cent.	17½ per cent.	35 per cent."
106. By omitting sub-item (B) and inserting in its stead the following sub-item:—			
"(B) Trimmings and ornaments, n.e.i. for hats shoes and other attire, not being partly or wholly of gold or silver; braids n.e.i.; fringes n.e.i.; frillings rufflings pleatings ruchings and water-waved ribbons, not covered by item 107 (C); webbings n.e.i.; jabots and textile bows (not including bow ties), being articles of women's apparel - - - - ad val.	Free	12½ per cent.	22½ per cent."
107. By omitting from sub-item (A) the following words:— "Woven and embroidered materials in the piece or otherwise:— Badges, hat and cap fronts (badged), looping for boots and shoes; labels and hangers for all purposes including plain hanger material; tubular tie material in the piece; bands bandings tapes having printed woven or embroidered"			

FIRST SCHEDULE—*continued.*

IMPORT DUTIES—*continued.*

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
Division VI.—Metals and Machinery—*continued.*			
179.—*continued.*			
"(c)—*continued.*			
(4) Motors, direct current or universal, not being rotary converters—			
(a) Of the type ordinarily used with motor vehicles - - - ad val.	27½ per cent.	45 per cent.	57½ per cent.
(b) Traction motors including traction motors for electric trolley buses ad val.	22½ per cent.	40 per cent.	57½ per cent.
(c) Suitable for use with gearless lifts, including bed plate, shaft, driving sheaf and brake drum imported with and for use therewith—			
(1) Not exceeding 50 horse-power ad val.	22½ per cent.	40 per cent.	57½ per cent.
(2) Exceeding 50 horse-power ad val.	Free	7½ per cent.	7½ per cent.
(d) Totally enclosed direct current mill type motors - - - ad val.	22½ per cent.	35 per cent.	45 per cent.
(e) Other—			
(1) Less than 0.746 kW. - ad val.	22½ per cent.	35 per cent.	50 per cent.
(2) Not less than 0.746 kW. and not exceeding 20 kW. - ad val.	22½ per cent.	40 per cent.	57½ per cent.
(3) Exceeding 20 kW. - ad val.	Free	7½ per cent.	7½ per cent.
(5) Rotary converters—			
(a) Not exceeding 10 kW. - - ad val.	22½ per cent.	40 per cent.	57½ per cent.
(b) Exceeding 10 kW. - - ad val.	Free	7½ per cent.	7½ per cent."
By inserting new sub-items as follows:—			
"(i) Electric fittings not containing metal to be dutiable according to material.			
"(j) Speed controls, separate or combined with motors, of the types used with domestic type electric sewing machines, including lighting attachments (known as needlelights) imported with and for use therewith ad val.	22½ per cent.	35 per cent.	50 per cent."
180. By omitting sub-item (g).			
By omitting from sub-item (r) the following words and figures:—			
"not included under Item 192"			
and inserting in their stead the following words:—			
"but not including brasswork bronzework and gunmetal work for general engineering and plumbing and other trades".			
By omitting from paragraph (1) of sub-item (c) the following words:—			
", whether imported separately or incorporated in or forming part of a wireless receiving set".			
By omitting from sub-item (i) the following words:—			
"incorporated in any article or appliance"			
and inserting in their stead the following words, figures and letter:—			
"otherwise than when incorporated in goods covered by item 181 (k)".			

FIRST SCHEDULE—*continued.*

IMPORT DUTIES—*continued.*

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
Division VI.—Metals and Machinery—*continued.*			
180.—*continued.*			
By omitting sub-item (L).			
By omitting sub-item (O) and inserting in its stead the following sub-item:—			
"(O) Piezo-electric crystals, cut or otherwise worked, but not mounted - - - - ad val.	27½ per cent.	45 per cent.	45 per cent."
181. By omitting sub-paragraph (*a*) of paragraph (1) of sub-item (A).			
By omitting clause (1) of sub-paragraph (*b*) of paragraph (1) of sub-item (A) and inserting in its stead the following clause:—			
"(1) Cathode ray oscilloscopes and oscillographs - ad val.	Free	10 per cent.	12½ per cent."
By omitting paragraphs (2) and (3) of sub-item (A).			
By omitting sub-item (B) and inserting in its stead the following sub-item:—			
"(B) Insulated (including enamelled or anodized) electric wire cable bars strips and the like (including coaxial cable)—			
(1) Weatherproof braided aerial cable, as prescribed by Departmental By-laws - ad val.	12½ per cent.	27½ per cent.	35 per cent.
(2) Cable and wire covered with cotton only, ad val.	17½ per cent.	40 per cent.	40 per cent.
(3) Copper, covered with paper cotton or paper and cotton only, impregnated or not, not covered by paragraph (2) - - ad val.	17½ per cent.	32½ per cent.	40 per cent.
(4) Telegraph and telephone cables, paper insulated, lead covered—			
(*a*) Having an additional protective covering outside the lead covering ad val.	17½ per cent.	32½ per cent.	40 per cent.
(*b*) Other - - - ad val.	17½ per cent.	37½ per cent.	40 per cent.
(5) Other—			
(*a*) Designed for working pressures exceeding 33,000 volts; heating cable; compensating or extension leads for thermocouples - - ad val.	Free	7½ per cent.	7½ per cent.
(*b*) Magnet winding wire as defined by Departmental By-laws - ad val.	12½ per cent.	25 per cent.	25 per cent.
(*c*) Other - - - ad val.	10 per cent.	22½ per cent.	22½ per cent."
By inserting new sub-items as follows:—			
"(E) Radio telegraphic and radio telephonic transmission and reception apparatus; radio broadcasting and television transmission and reception apparatus (including those incorporating gramophones) and television cameras; radio navigational aid apparatus radar apparatus and radio remote control apparatus—			
(1) Radio broadcast receivers, with or without sound recorders and reproducers, including furniture incorporating such goods, assembled and complete, including partly assembled or incomplete goods which the Minister directs shall be deemed to be assembled and complete - - each	£5	£5	£5
and ad val.	27½ per cent.	45 per cent.	45 per cent.

FIRST SCHEDULE—*continued.*

IMPORT DUTIES—*continued.*

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
Division VI.—Metals and Machinery—*continued.*			
181.—*continued.*			
"(E) Radio telegraphic, &c.—*continued.*			
(2) Television receivers designed for the reception of signals without line connection, with or without radio broadcast receivers and sound recorders and reproducers, including furniture incorporating such goods, but not including cathode ray tubes (picture tubes), assembled and complete, including partly assembled or incomplete goods which the Minister directs shall be deemed to be assembled and complete - - each	£25	£25	£25
and ad val.	27½ per cent.	45 per cent.	45 per cent.
(3) Television cameras (pick-up head only) ad val.	Free	Free	17½ per cent.
(4) Other, but not including parts imported separately suitable for use in line telephonic and telegraphic apparatus - - ad val.	27½ per cent.	45 per cent.	45 per cent.
"(F) Microphones and stands therefor; loudspeakers and parts therefor; audio frequency amplifiers; audio frequency amplifier sets comprising essentially amplifiers with either or both microphones (with or without stands therefor) and loudspeakers—			
(1) Loudspeakers imported separately - each	7s. 6d.	10s.	10s.
or ad val.	27½ per cent.	45 per cent.	45 per cent.
whichever rate returns the higher duty.			
(2) Parts for loudspeakers, not including transformers - - - - ad val.	27½ per cent.	45 per cent.	45 per cent.
(3) Other - - - - ad val.	27½ per cent.	45 per cent.	45 per cent.
"(G) Components of types suitable for use, or generally similar to those used, in radio and television transmitters or receivers or audio amplifiers, viz.:—			
(1) Valve sockets - - - - each	2d.	3½d.	3½d.
or ad val.	27½ per cent.	45 per cent.	45 per cent.
whichever rate returns the higher duty.			
(2) Power packs - - - - each	15s.	25s.	25s.
or ad val.	27½ per cent.	45 per cent.	45 per cent.
whichever rate returns the higher duty.			
(3) Resistors, fixed or variable; fixed resistors combined in the one external covering with fixed capacitors or inductors - each	½d.	1d.	1d.
or ad val.	27½ per cent.	45 per cent.	45 per cent.
whichever rate returns the higher duty.			
"(H) Capacitors, fixed or variable—			
(1) Static, power factor correction, having a rating of 1 kVAr. or higher - per kVAr.	£1 1s. 3d.	£1 1s. 3d.	£1 1s. 3d.
less ad val.	27½ per cent.	..	..
or ad val.	22½ per cent.	50 per cent.	50 per cent.
whichever rate returns the higher duty.			

FIRST SCHEDULE—*continued.*

IMPORT DUTIES—*continued.*

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
Division VI.—Metals and Machinery—*continued.*			
181.—*continued.*			
" (H) Capacitors, &c.—*continued.*			
(2) Electrolytic, including multiple units—			
(*a*) Having a rating exceeding 100 volts per capacitor in the unit or ad val. whichever rate returns the higher duty.	22½ per cent.	7d. 57½ per cent.	7d. 57½ per cent.
(*b*) Other per capacitor in the unit or ad val. whichever rate returns the higher duty.	22½ per cent.	3d. 57½ per cent.	3d. 57½ per cent.
(3) Variable or adjustable, of capacities exceeding 0.0001 microfarad but not exceeding 0.001 microfarad; including such capacitors when ganged per capacitor in the unit or gang or ad val. whichever rate returns the higher duty.	1s. 1½d. 27½ per cent.	2s. 7½d. 45 per cent.	2s. 7½d. 45 per cent.
(4) Variable or adjustable, midget, of 0.0001 microfarad capacity or less - each or ad val. whichever rate returns the higher duty.	9d. 27½ per cent.	1s. 3d. 45 per cent.	1s. 3d. 45 per cent.
(5) Mica, fixed - - - - - each or ad val. whichever rate returns the higher duty.	3d. 27½ per cent.	4d. 45 per cent.	4d. 45 per cent.
(6) Other, including paper and ceramic - ad val.	22½ per cent.	50 per cent.	50 per cent.
" (I) X-ray tubes - - - - - - ad val.	Free	12½ per cent.	12½ per cent.
" (J) Thermionic, cold cathode and photo cathode valves and tubes (including vapour or gas filled valves and tubes, cathode ray tubes, television camera tubes and mercury arc rectifying valves and tubes, but not including valves covered by sub-item (I)); photo cells; transistors, thermistors and other semi-conductor devices; mounted piezo-electric crystals—			
(1) Cathode ray (picture) tubes as used in television receivers, whether imported separately or otherwise - - - each *and* ad val.	£11	£11 10 per cent.	£11 10 per cent.
(2) Thermionic valves and tubes including rectifying valves, as used in transmission or reception apparatus for radio broadcasting, television, radio telegraphy or radio telephony - - - - - each or ad val. whichever rate returns the higher duty.	2s. 9d. 27½ per cent.	3s. 9d. 45 per cent.	3s. 9d. 45 per cent.
And an additional duty of - each	2s. 9d.	2s. 9d.	2s. 9d.

THIRD SCHEDULE—*continued.*

IMPORT DUTIES—*continued.*

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
Division XVI.—Miscellaneous—*continued.*			
418. By omitting sub-item (B). By omitting sub-item (D) and inserting in its stead the following sub-item:— "(D) Bacteriological apparatus, including counting apparatus, culture dishes, flasks and tubes, slide cabinets and trays, staining dishes and plates, stains, incubators, but not including goods covered by item 246 - - - - ad val. By omitting sub-item (F).	Free	7½ per cent.	7½ per cent."

FOURTH SCHEDULE.

Section 6.

AMENDMENTS OF THE SCHEDULE TO THE PRINCIPAL ACT AS AMENDED BY SECTIONS THREE, FOUR AND FIVE OF THIS ACT.

IMPORT DUTIES.

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
DIVISION VI.—METALS AND MACHINERY.			
137. By inserting a new sub-item as follows:— "(E) Foil, whether or not embossed, cut to shape, perforated, coated or printed, or backed with paper or other reinforcing material, of a thickness (excluding any backing) not exceeding 0.15 millimetre—			
(1) Copper, of a thickness (excluding any backing) of not less than 0.05 millimetre - ad val.	12½ per cent.	12½ per cent.	12½ per cent.
And an additional duty as follows:—			
When the value for duty is less than £560 per ton - - - - ad val.	..	10 per cent.	10 per cent.
When the value for duty is not less than £560 per ton - - - per ton	..	£56	£56
And a further additional duty calculated at the rates applying to unwrought copper.			
(2) Brass, of a thickness (excluding any backing) of not less than 0.05 millimetre - ad val.	15 per cent.	25 per cent.	25 per cent.
And an additional duty on the copper content calculated at the rates applying to unwrought copper.			
(3) Other - - - - ad val.	Free	7½ per cent.	7½ per cent."
138. By inserting a new sub-item as follows:— "(F) Foil, whether or not embossed, cut to shape, perforated, coated or printed, or backed with paper or other reinforcing material, of a thickness (excluding any backing) not exceeding 0.15 millimetre - ad val.	Free	7½ per cent.	7½ per cent."

FOURTH SCHEDULE—*continued.*

IMPORT DUTIES—*continued.*

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
Division VI.—Metals and Machinery—*continued.*			
179.—*continued.*			
"(5)—*continued.*			
controls of the Scherbius, Kraemar, Ward Leonard or other similar types for motors exceeding 300 horse-power - - - - - ad val.	Free	7½ per cent.	7½ per cent."
By omitting from paragraph (7) of sub-item (B) the following words and letters:—			
" lightning arresters n.e.i.; ",			
By omitting sub-paragraph (*a*) of paragraph (4) of sub-item (D) and inserting in its stead the following sub-paragraph:—			
(*a*) Selenium power rectifiers; copper oxide power rectifiers - - - - - - ad val.	Free	7½ per cent.	7½ per cent."
By inserting a new sub-item as follows:—			
"(K) Lightning arresters—			
(1) Suitable for the protection of electricity supply equipment—			
(*a*) Valve type, rated at 5,000 amperes, suitable for use in electricity systems operating at pressures between 6.6 kV. and 33 kV. (both inclusive) - ad val.	10 per cent.	20 per cent.	20 per cent.
(*b*) Other - - - - - - ad val.	Free	7½ per cent.	7½ per cent.
(2) Other - - - - - - - ad val.	22½ per cent.	45 per cent.	50 per cent."
181. By omitting sub-paragraphs (*b*) and (*c*) of paragraph (1) of sub-item (A).			
By omitting sub-item (AA).			
By inserting a new sub-item as follows:—			
"(A) Alternating current watt-hour meters—			
(1) (*a*) Two rate; two rate and three element combined - - - - ad val.	Free	10 per cent.	12½ per cent.
(*b*) Three element other than two rate - ad val.	Free	7½ per cent.	7½ per cent.
(2) Other - - - - - - - each	6s. 8d.	11s. 8d.	13s. 4d."
By omitting paragraph (2) of sub-item (E) and inserting in its stead the following paragraph:—			
"(2) Television receivers designed for the reception of signals without line connexion, with or without radio broadcast receivers and sound recorders and reproducers, including furniture incorporating such goods, assembled and complete, including partly assembled or incomplete goods which the Minister directs shall be deemed to be assembled and complete			
On the receiver less picture tube - - each	£25	£25	£25
and ad val.	27½ per cent.	45 per cent.	45 per cent.
And on the picture tube - - - each	£6	£6	£6
and ad val.	..	12½ per cent.	12½ per cent."
By inserting in sub-item (G) a new paragraph as follows:—			
"(4) Chokes and choke coils, not covered by item 181 (F) (2) ad val.	27½ per cent.	45 per cent.	45 per cent."
By omitting paragraphs (3) and (4) of sub-item (H) and inserting in their stead the following paragraphs:—			
"(3) Variable or adjustable, of capacities exceeding 0.0001 microfarad and not exceeding 0.001 microfarad, including such capacitors when ganged provided at			

FOURTH SCHEDULE—*continued.*

IMPORT DUTIES—*continued.*

Tariff Items.	British Preferential Tariff.	Intermediate Tariff.	General Tariff.
Division VI.—Metals and Machinery—*continued.*			
181.—*continued.*			
"(3)—*continued.*			
least one capacitor in the gang is of capacity exceeding 0.0001 microfarad and not exceeding 0.001 microfarad, not covered by paragraph (7)			
per capacitor in the unit or gang or ad val.	1s. 1½d. 27½ per cent.	2s. 7½d. 45 per cent.	2s. 7½d. 45 per cent.
whichever rate returns the higher duty.			
"(4) Variable or adjustable, midget, of 0.0001 microfarad capacity or less, not covered by paragraph (7) each or ad val.	9d. 27½ per cent.	1s. 3d. 45 per cent.	1s. 3d. 45 per cent.
whichever rate returns the higher duty."			
By inserting in sub-item (H) a new paragraph as follows:—			
"(7) Of types used as standards or references for comparison and measuring purposes - - - ad val.	27½ per cent.	45 per cent.	45 per cent."
By omitting paragraph (1) of sub-item (J) and inserting in its stead the following paragraph:—			
"(1) Cathode ray tubes—			
(*a*) Picture tubes as used in television receivers each	£6	£6	£6
and ad val.	..	12½ per cent.	12½ per cent.
(*b*) Other - - - - - ad val.	Free	7½ per cent.	7½ per cent."
By omitting paragraph (4) of sub-item (J) and inserting in its stead the following paragraph:—			
"(4) Photo cells, but not including goods covered by paragraph (3) and vacuum or gas filled photo cells ad val.	17½ per cent.	42½ per cent.	42½ per cent."
By inserting a new sub-item as follows:—			
"(L) (1) Electron guns for goods covered by sub-item (J) (1) (*a*) - - - - ad val.	Free	12½ per cent.	12½ per cent.
(2) Electron guns for goods covered by sub-item (J) (1) (*b*) - - - - ad val.	Free	7½ per cent.	7½ per cent."
By inserting new sub-items as follows:—			
"(M) Electrical measuring or checking instruments and apparatus, for measuring or checking electrical quantities or alpha, beta, gamma, X-ray, cosmic or similar radiations, but not including goods designed for the purposes of measuring or checking some non-electrical quality and goods covered by sub-item (A)—			
(1) Cathode ray oscilloscopes; cathode ray oscillographs - - - - ad val.	32½ per cent.	45 per cent.	45 per cent.
(2) Other - - - - - ad val.	35 per cent.	45 per cent.	45 per cent.
"(N) Source signal generators (e.g. audio frequency oscillators, standard signal generators) n.e.i. (non-mechanical), of the types used in connexion with the observation or checking of electrical and radiation phenomena; signal (audio and radio frequency and radiation) modifiers n.e.i. - - - ad val.	27½ per cent.	45 per cent.	45 per cent.
"(O) Resistors and resistance boxes of the types used as standards or references for comparison and measuring purposes - - - - ad val.	27½ per cent.	45 per cent.	45 per cent."
189. By omitting paragraph (1) of sub-item (E) and inserting in its stead the following paragraph:—			
"(1) Air or gas operated - - - - ad val.	Free	7½ per cent.	7½ per cent

FOURT.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 72 (C. A. No. 59-C-1847)

THE COMMONWEALTH OF AUSTRALIA.

CUSTOMS TARIFF (PRIMAGE DUTIES) 1934-1958.*

An Act relating to Primage Duties of Customs.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Customs Tariff (Primage Duties) 1934-1958.** Short title. Short title amended; No. 32, 1918, s. 2.

2. The *Customs Act* 1901-1930 shall be incorporated and read as one with this Act. Incorporation.

3. In this Act, except where otherwise clearly intended— Definitions.

"British Preferential Tariff" means the rates of duty set out in the Schedule to the *Customs Tariffs* 1933 in the column headed "British Preferential Tariff";

"Item" means Tariff Item as set out in the Schedule to the *Customs Tariffs* 1933;

"the Schedule" means the Schedule to this Act.

4.—(1.) The time of the imposition of the primage duties imposed by this Act, except in respect of goods in respect of which a later date is specified in the Schedule, is the fifth day of October, One thousand nine hundred and thirty-three, at nine o'clock in the forenoon, reckoned according to standard time in the Territory for the Seat of Government, and this Act shall be deemed to have come into operation at that time. Time of imposition of Primage Duties.

(2.) The time of the imposition of the primage duties imposed by this Act in respect of goods in respect of which a date later than the fifth day of October, One thousand nine hundred and thirty-three is specified in the Schedule, is the later

* The *Customs Tariff (Primage Duties)* 1934-1958 comprises the *Customs Tariff (Primage Duties)* 1934, as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table:—

Act.	Number and Year.	Date of Assent.	Date of Commencement.
Customs Tariff (Primage Duties) 1934	No. 6, 1934	14th July, 1934 ..	5th October, 1933
Statute Law Revision Act 1950	No. 80, 1950	16th December, 1950 ..	31st December, 1950
Customs Tariff (Primage Duties) 1958	No. 21, 1958	21st May, 1958 ..	18th June, 1958

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date so specified at nine o'clock in the forenoon, reckoned according to standard time in the Territory for the Seat of Government.

Imposition of duties.

5. In addition to the duties of Customs collected in accordance with any other law of the Commonwealth for the time being in force, primage duties are hereby imposed at the rates and on the goods specified in the Schedule (except such goods as are by or under the Schedule exempt from primage duty) as from the respective times specified in section four of this Act, and shall respectively be deemed to have been imposed at those times, and shall be charged, collected and paid to the use of the King for the purposes of the Commonwealth on all goods dutiable under the Schedule which are entered for home consumption after the times when those duties are respectively deemed to have been imposed.

Orders by the Minister.

Repealed by No. 80, 1950, s. 3 and First Schedule; inserted by No. 21, 1958, s. 2.

6.—(1.) In this section, "order" means an order made by the Minister for the purposes of the Schedule.

(2.) Orders shall not be deemed to be Statutory Rules within the meaning of the *Rules Publication Act* 1903-1939.

(3.) The provisions of sections forty-eight and forty-nine of the *Acts Interpretation Act* 1901-1957 (other than paragraphs (*a*) and (*b*) of sub-section (1.), and sub-section (2.), of that first-mentioned section) apply, by force of this section, to an order in like manner as those provisions apply to a regulation.

(4.) An order takes effect from the date of publication in the *Gazette* or such later date, if any, as is specified in the order.

* * * * * * *

Sections 7 and 8 repealed by No. 80, 1950, s. 3 and First Schedule.

Saving.

9. Nothing in this Act shall, on and after the first day of December, One thousand nine hundred and thirty-three, apply to any goods the produce or manufacture of the Dominion of New Zealand.

THE SCHEDULE.

Amended by No. 21, 1958, s. 3.

1. Goods exempt from primage duty—

Goods covered by Items 51 (A), 100, 129 (A), 157, 158, 160 (A), 162, 163, 164, 165, 166, 167, 171, 285 (C), 320 (C)(2)(*b*), 334 (G)(2), 338 (C), 339, 368, 370, 371, 371A, 372, 373, 394 (A), 400, 401, 409, 410 (B)(1), 410 (C), 417 (B), 423, 424 (E) and 427 (A);

THE SCHEDULE—*continued.*

Agricultural and horticultural seeds not covered by any Item;

Agricultural horticultural and viticultural spraying and dusting materials and preparations to be used in the checking of plant and seed insect pests and of plant and seed diseases;

Annatto cheese cloth and rennet to be used in the cheese industry;

Bags sacks packs and bales for bran, chaff, potatoes, onions, ore, coal, corn, flour, sugar and wool;

Blue prints;

Books and periodicals imported by or for:—
Any public library including the Mitchell Library of New South Wales,
The National Library, Federal Capital Territory,
The libraries of the Universities of Sydney, Melbourne, Adelaide, Queensland, Western Australia and Tasmania,
State Parliamentary Libraries;

Bullion and specie;

Calico for use in the manufacture of bags of a size capable of holding at least forty-five pounds of flour;

Caustic soda and caustic potash for fellmongering purposes;

Chemicals to be used in the recovery of metals by the flotation cyaniding and similar processes;

Cream separators and parts thereof;

Dips washes and drenches for live stock and materials for use in the manufacture of such dips washes and drenches;

Fauna for Zoological Gardens at Sydney, Melbourne, Brisbane, Adelaide, Perth and Hobart;

Fishing nets and netting for fishing and twine for the manufacture or repair of such nets or netting;

Garden and field spraying machines and spray pumps;

Hay presses;

Historical records, in print picture or manuscript, imported by or for public libraries, including the Mitchell Library of New South Wales;

Linseed—On and after 8th December, 1933;

Literature published by or issued under the authority of the League of Nations;

Machinery and parts thereof for use in the mining industry;

Manures and fertilizers;

Materials for use in the manufacture of agricultural horticultural and viticultural spraying preparations;

Materials for use in the manufacture of cornsacks floursacks and other sacks;

Milking machines and parts thereof;

Miners' hats and caps;

Nitrate of soda }
Potash } for use as a fertilizer or in the manufacture of fertilizers;

Outside packages and outer coverings, including the sole containing package, containing solely goods exempt from primage duty;

Postage stamps;

Potato raisers diggers sorters and planters;

Rabbit poisons;

Rabbit and dingo traps;

Radium;

Rape seed for pasture purposes;

Rock phosphate;

Rock salt;

Sheep shearing machines and parts thereof;

Soda ash covered by Item 278 (A)(2)(*a*);

Stockinette for use in the manufacture of meat wraps;

THE SCHEDULE—*continued.*

Straw stackers;

Stud stock, viz.:—horses, cattle, donkeys, sheep, pigs and poultry;

Sub-surface packers for agricultural purposes;

Sulphur;

Tractors and parts thereof;

Vessels exceeding 500 tons gross register;

Water bore casings;

Water pipes to be used in the agricultural, dairying, grazing and mining industries;

Wire, iron and steel, of gauges (Imperial Standard Wire Gauge) Nos. 8 to 14 both inclusive;

Wool presses;

Works of art for national art galleries;

The following goods when admissible under the British Preferential Tariff:—

Goods covered by Items 174, 176 (J)—On and after 8th December, 1933, 178 (D)(2)—On and after 8th December, 1933, 178 (D)(3)—On and after 8th December, 1933, 178 (F)(1)—On and after 8th December, 1933, 178 (F)(2)(*a*)—On and after 8th December, 1933, 178 (F)(3)(*a*)—On and after 8th December, 1933, 179 (B)(1) to (5) inclusive, 179 (D)(1)(*a*)(1)(*b*) (when exceeding 175 horse-power)—On and after 8th December, 1933, 179 (D)(1)(*a*)(2)—On and after 8th December, 1933, 179 (D)(1)(*a*)(3)—On and after 8th December, 1933, 179 (D)(1)(*a*)(4)(*b*)—On and after 8th December, 1933, 179 (D)(1)(*b*)(2)—On and after 8th December, 1933, 179 (D)(1)(*c*)(3)—On and after 8th December, 1933, 179 (D)(1)(*c*)(4)(*b*)—On and after 8th December, 1933, 179 (D)(2)(*a*)(2) (when exceeding 12,750 k.v.a.)—On and after 8th December, 1933, 179 (D)(2)(*b*)(2) (when exceeding 1,275 k.v.a.)—On and after 8th December, 1933, 179 (D)(2)(*c*)(2)—On and after 8th December, 1933, 194 (A)—On and after 8th December, 1933, 194 (B)(1)—On and after 8th December, 1933, 219 (C), 278 (A)(2)(*b*), 294 (C)—On and after 8th December, 1933, 404, 404A and 415A;

Fuel oil and coal consumed in Australian waters;

Goods, not otherwise exempt from primage duty, for public hospitals; and

Any other goods which are from time to time exempted from primage duty by order made by the Minister* and published in the *Gazette*;†

Amended by No. 21, 1958, s. 3.

2. Goods subject to primage duty at the rate of four per centum ad valorem:—

Goods covered by Items 55, 108 (A), 334 (C), 335, 344 and 419 (C):

Fibres for use in the manufacture of binder twine;

Outside packages and outer coverings, including the sole containing package, containing any goods subject to primage duty at the rate of four per centum ad valorem but not containing any goods subject to primage duty at the rate of five per centum or ten per centum ad valorem;

Power kerosene;

---

* By virtue of section 3 of the *Customs Tariff (Primage Duties)* 1958 the words "order made by the Minister" were substituted for the words "Proclamation made by the Governor-General acting with the advice of the Federal Executive Council".

Section 4 of that Act reads as follows:—

"4. A Proclamation made for the purposes of the Schedule to the Principal Act and in force immediately before the commencement of this Act continues in force as if it were an order made by the Minister for the purposes of the Schedule to the Principal Act as amended by this Act.".

† For Proclamations made before 1st January, 1951, exempting further goods *see* Commonwealth Acts 1901–1950, Volume II., p. 1529.

For Proclamations and orders made between 1st January, 1951, and 31st October, 1958, *see*—

Gazette 1951, pp. 2475, 2665 and 2885;
Gazette 1952, pp. 1952, 2709, 3109, 3929 and 4337;
Gazette 1953, pp. 602, 2494 and 3162;
Gazette 1954, pp. 527, 2429, 3145 and 3146;
Gazette 1955, pp. 1668, 3334 and 3336;
Gazette 1956, pp. 1466, 1830, 2701 and 3350;
Gazette 1957, pp. 1499, 1377, 1579, 1580, 2090, 3204, 3206 and 3862; and
Gazette 1958, pp. 878, 1629, 2041, 2689, 3059, 3377 and 3466.

Customs Tariff (Primage Duties) 1934-1958. 5

THE SCHEDULE—*continued.*

The following goods when admissible under the British Preferential Tariff which are not exempt from primage duty:—

Goods covered by Items 136 (F)(2) (first occurring), 358 (A) and 358 (B);

Covered cable and wire covered by Item 181 (A)(1);

Gelignite; blasting and dynamite gelatine;

Knitting machines and parts thereof;

The following goods when not admissible under the British Preferential Tariff which are not exempt from primage duty:—

Goods covered by Items 174, 176 (J)—On and after 8th December, 1933, 178 (D)(2)—On and after 8th December, 1933, 178 (D)(3)—On and after 8th December, 1933, 178 (F)(1)—On and after 8th December, 1933, 178 (F)(2)(*a*)—On and after 8th December, 1933, 178 (F)(3)(*a*)—On and after 8th December, 1933, 179 (B)(1) to (5) inclusive, 179 (D)(1)(*a*)(1)(*b*) (when exceeding 175 horse-power)—On and after 8th December, 1933, 179 (D)(1)(*a*)(2)—On and after 8th December, 1933, 179 (D)(1)(*a*)(3)—On and after 8th December, 1933, 179 (D)(1)(*a*)(4)(*b*)—On and after 8th December, 1933, 179 (D)(1)(*b*)(2)—On and after 8th December, 1933, 179 (D)(1)(*c*)(3)—On and after 8th December, 1933, 179 (D)(1)(*c*)(4)(*b*)—On and after 8th December, 1933, 179 (D)(2)(*a*)(2) (when exceeding 12,750 k.v.a.)—On and after 8th December, 1933, 179 (D)(2)(*b*)(2) (when exceeding 1,275 k.v.a.)—On and after 8th December, 1933, 179 (D)(2)(*c*)(2)—On and after 8th December, 1933, 194 (A)—On and after 8th December, 1933, 194 (B)(1)—On and after 8th December, 1933, 219 (C), 294 (C)—On and after 8th December, 1933, 404, 404A and 415A;

Fuel oil and coal consumed in Australian waters;

Goods for public hospitals; and

Any other goods which are from time to time, by order made by the Minister* and published in the *Gazette*, added to the list of goods upon which primage duty at the rate of four per centum is imposed;†

3. Goods subject to primage duty at the rate of five per centum ad valorem:— Amended by No. 21, 1958, s. 3.

Goods covered by Items 106 (C), 147, 224, 231 (A)(2), 281 (L)(1), 392 (A)(1), 392 (A)(2), 392 (A)(3), 392 (G) and 435, which are not subject to primage duty at the rate of four per centum ad valorem or exempt from primage duty;

Iron and steel boiler tubes;

Jute fibre;

The following goods when admissible under the British Preferential Tariff which are not subject to primage duty at the rate of four per centum ad valorem or exempt from primage duty:—

Goods covered by the following Items, viz.:—

2,	30,	44 (F),
4,	31,	46,
5,	33,	47,
6 (B) (as to deferred duty),	36,	49,
	37,	50,
7,	38,	51 (C)(2),
8,	39,	51 (E),
9,	40,	52,
10,	41,	53 (A),
11,	42,	53 (C),
16,	44 (B)(2),	53 (D),
17,	44 (C)(2),	54,
27,	44 (C)(3),	56 (B),
28,	44 (D),	56 (C),
29,	44 (E),	57 (B),

* *See* footnote * on p. 4.

† For Proclamations made before 1st January, 1951, specifying further goods upon which primage duty at the rate of 4% is imposed *see* Commonwealth Acts 1901-1950, Volume II., p. 1529.
For Proclamations made between 1st January, 1951, and 31st October, 1958, *see Gazette* 1951, pp. 2476 and 2666.

Customs Tariff (Primage Duties) 1934-1958.

THE SCHEDULE—*continued.*

Items—*continued.*

57 (C),
57 (D),
58 (A),
58 (C),
58 (D),
59,
60,
61,
62,
63 (A),
64 (A),
65,
67,
68,
69 (C),
70,
71,
72,
74,
75,
76,
78 (D),
78 (E),
78 (F),
78 (G),
78 (H)(1),
78 (H)(3),
79,
80,
81,
82 (A),
82 (B),
82 (C),
82 (D),
82 (E),
82 (F),
82 (G),
82 (H),
83,
84,
85,
87 (A),
88,
89 (B),
91 (B),
93,
94,
96 (B),
97,
98,
99,
101,
102,
103 (A),
104,
105 (A)(1)(*b*),
105 (AA)(2),
105 (F)(1),
105 (F)(2),
105 (F)(4),
105 (F)(5),
105 (G),
105 (H)(1),
105 (H)(2)(*a*),
105 (J)(1),
105 (J)(2)(*b*),
106 (D)(2),
106 (E)(2),
106 (E)(3),
106 (F)(2),
106 (F)(3),
107—Up to and including 3rd November, 1933,
107(A)—On and after 4th November, 1933,
108 (B),
109,
110,
111,
112 (A),
112 (B)(2),
113 (A),
114 (B),
114 (C),
114 (D),
114 (E),
114 (F),
114 (G),
114 (H),
115,
116,
117,
118 (B),
118 (C),
119,
120 (A),
120 (AA),
120 (B),
120 (C)(1)(*b*),
120 (E),
121 (A),
122,
123,
124,
126 (B),
130 (A),
131,
133,
136 (A),
136 (B),
136 (C),
136 (D),
136 (E),
136 (F)(1),
136 (F)(2) (as to deferred duty),
136 (G),
137 (A)(2),
137 (B),
138,
139,
140,
141,
143,
144 (A),
144 (B),
146,
148 (A),
152 (A)(2),
152 (A)(3),
152 (B),
152 (C),
153,
154,
155,
156 (B),
159 (B),
161 (A),
161 (B)(1),
161 (B)(2),
161 (C),
170 (A)(1),
170 (A)(2)(*a*),
170 (A)(2)(*b*),
170 (B),
170 (C),
170 (D),
172 (B),
173 (A),
176 (C),
176 (D),
176 (E),
176 (F),
176 (H),
176 (I),
177 (A),
178 (B),
178 (C),
178 (D)(1),
178 (E),
178 (F) (2) (*b*)—On and after 4th November, 1933,
178 (F) (3) (*b*)—On and after 4th November, 1933,
179 (A),
179 (B)(7),
179 (C),
179 (D)(1)(*a*)(1)(*a*),
179 (D)(1)(*a*)(1)(*b*) (when not exceeding 175 horsepower),
179 (D) (1)(*a*)(3)(*a*)—Up to and including 3rd November, 1933,
179 (D) (1)(*a*)(4)(*a*)—On and after 4th November, 1933,
179 (D)(1)(*b*)(1),
179 (D)(1)(*c*)(1),
179 (D)(1)(*c*)(2),
179 (D) (1)(*c*)(3)(*a*)—Up to and including 3rd November, 1933,

THE SCHEDULE—*continued.*

Items—*continued.*

179 (D)(1)(*c*)(4)(*a*)—On and after 4th November, 1933,
179 (D)(1)(*d*),
179 (D)(2)(*a*)(1),
179 (D) (2) (*a*) (2) (when not exceeding 12,750 k.v.a.),
179 (D) (2) (*b*) (2)
179 (D) (2) (*b*) (2) (when not exceeding, 1,2/5 k.v.a.),
179 (D)(2)(*c*)(1),
179 (D)(2)(*d*),
179 (D)(3)(*a*),
179 (D)(3)(*c*) (as to deferred duty),
179 (D)(4),
179 (D)(5),
179 (F),
180 (A)(2),
180 (B)(1),
180 (B)(2)(*b*),
180 (C),
180 (D),
180 (E),
180 (F),
180 (G),
180 (H),
180 (I),
180 (J),
180 (K),
180 (L),
180 (M),
180 (N),
181 (AA),
181 (B),
181 (C),
182,
184,
185,
186 (as to deferred duty),
187 (B),
187 (C),
187 (D),
188,
190,
191,
192,
194 (B)(2),
194 (C),
197 (A),
199,
200,
201,
203,
204 (B),
206,
208 (A),
208 (C),
208 (D),
208 (E),
209,
210 (A),
211,
213,
215—Up to and including 3rd November, 1933,
215 (B)—On and after 4th November, 1933,
216 (B),
219 (A),
219 (B),
222,
225,
226,
227 (A) (as to tallow only),
227 (B),
228 (D),
229 (F)(2),
229 (H)(1),
229 (H)(2),
230,
231 (B)(1),
231 (B)(2),
231 (C),
231 (D),
231 (E),
231 (F),
231 (G),
231 (H),
232 (A),
232 (B),
232 (C),
233,
234,
235,
237 (C),
239,
240,
241 (B),
241 (C),
242 (B) (as to deferred duty),
242 (C),
242 (F),
242 (G),
244 (B),
244 (C),
249 (B),
250 (B),
250 (C),
250 (E),
250 (F),
251 (A),
251 (C),
252,
254 (B),
255,
256,
257,
258,
259,
262 (B)(2),
262 (C),
262 (D),
262 (E),
262 (F),
264 (A),
264 (B),
264 (C),
264 (D)(1),
265,
266 (A),
266 (B),
266 (C),
267 (A),
268,
269 (B),
269 (C),
270,
271,
272,
273,
275 (B),
276,
277,
278 (A)(1),
278 (B),
278 (C),
279 (A) (as to deferred duty),
279 (B),
280 (B),
280 (D)(1),
281 (A),
281 (B),
281 (C),
281 (D),
281 (E),
281 (F),
281 (G),
281 (H),
281 (L)(2),
281 (M),
281 (N),
281 (O),
283,
284 (B),
285 (A),
286 (B),
286 (C),
289 (A),
289 (B),
290 (C),
290 (E),
291 (C)(2),
291 (D),
291 (F)(2),
291 (F)(3),
291 (H),
291 (I)(2),
291 (J),
291 (K),
291 (L),
291 (M),
291 (N),
292,

THE SCHEDULE—*continued.*

Items—*continued.*

293 (B),
293 (C),
294 (A),
294 (B),
295,
296,
297,
298 (B),
299,
300 (A),
300 (B),
300 (C),
300 (D),
300 (E),
300 (G),
300 (H),
300 (I),
300 (J),
301 (D),
302,
303,
304,
305,
306,
318 (A)(1),
318 (A)(2),
318 (A)(4)(*a*),
319 (A)(1),
319 (A)(2),
319 (A) (3)—Up to and including 3rd November, 1933,
319 (A) (4)—On and after 4th November, 1933,
319 (A)(5),
319 (A) (6)—Up to and including 3rd November, 1933
319 (B)(1),
320 (B),
322,
323 (B),
324 (A),
324 (C),
324 (D),
325,
326,
328,
329,
330,
331 (B)(2)(*a*),
331 (C),
332 (A),
332 (B),
332 (C),
332 (E),
332 (F),
332 (G),
333,
334 (F) (1) (as to deferred duty),
334 (F)(2),
334 (G)(1)(*a*),
334 (G)(3),
334 (I),
334 (J) (as to blotting paper only),
334 (L)(2),
334 (L)(3),
334 (M)(1),
334 (N),
334 (O)(1),
334 (O)(4),
334 (Q),
334 (S),
334 (T),
334 (U),
336 (B),
337 (B),
338 (A),
340,
341,
342,
343,
346 (D),
346 (E),
346 (F),
352 (A)(1),
352 (A)(4),
352 (B),
353,
354 (A),
355,
356,
357,
359 (B),
359 (C),
359 (D)(1),
359 (D)(2),
359 (D)(3),
359 (E),
359 (F)(1),
359 (F)(2),
359 (F)(3),
359 (F)(5),
359 (F)(7),
359 (F)(8),
359 (F)(9),
359 (G)(1),
359 (G)(2),
359 (G)(3),
359 (G)(4),
359 (G)(5),
359(G)(6)(*a*)—Up to and including 3rd November, 1933,
359 (G) (7)—Up to and including 3rd November, 1933,
359 (G) (8)—Up to and including 3rd November, 1933,
360,
363,
364,
365 (A),
365 (B),
365 (C),
365 (D),
374 (B),
374 (C),
374 (D)(1),
374 (D)(3),
375 (B),
375 (C),
376 (A),
376 (B),
376 (C),
376 (D),
376 (F),
376 (G),
380 (A)(1),
381 (B),
381 (C),
381 (E),
384 (A),
385,
386,
388 (B),
390 (A),
391,
392 (A)(4),
392 (C),
392 (D),
392 (E),
392 (F)(1),
393 (A),
393 (D),
394 (B),
394 (C),
394 (D),
397 (A),
397 (B),
397 (C),
397 (F),
398,
402,
410 (B)(3),
410 (D),
411,
419 (B),
419 (D),
420,
422 (A),
424 (A),
424 (B)(1),
424 (D),
425,
426 (B),
427 (C),
428,
429,
430,
431,
432 (A),
432 (B), and
433; and

THE SCHEDULE—*continued.*

Any other goods which are from time to time, by order made by the Minister * and published in the *Gazette*, added to the list of goods upon which primage duty at the rate of five per centum is imposed;† and

4. Goods subject to primage duty at the rate of ten per centum ad valorem—
All goods whatsoever, which are not, in pursuance of the foregoing provisions of this Act—
(i) exempt from primage duty;
(ii) subject to primage duty at the rate of four per centum ad valorem; or
(iii) subject to primage duty at the rate of five per centum ad valorem.

For the purposes of determining the rate of duty applicable under this Act to any goods to which Items 168 (B)(1), 179 (B)(6), 179 (E), 332 (D) or 376 (E) apply, the goods shall be deemed to be covered by the item which determines, for the purposes of the *Customs Tariffs* 1933, the rate of duty on those goods.

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* *See* footnote * on p. 4.

† For Proclamations made before 1st January, 1951, specifying further goods upon which primage duty at the rate of 5% is imposed, *see* Commonwealth Acts 1901–1950, Volume II., p. 1533.
For Proclamations and order made between 1st January, 1951, and 31st October, 1958, *see*—
Gazette 1951, pp. 2477 and 2665;
Gazette 1952, pp. 1952, 3109 and 4337;
Gazette 1954, p. 3145;
Gazette 1955, pp. 1668 and 3335;
Gazette 1957, pp. 1578, 2090 and 3204; and
Gazette 1958, pp. 878 and 3377.

By Authority: A. J. ARTHUR, Commonwealth Government Printer, Canberra.
4447/58.—2

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 73A
C. A. No.
59-C-1847

THE COMMONWEALTH OF AUSTRALIA.

SALES TAX ASSESSMENT ACT (No. 1) 1930-1953.

SALES TAX ASSESSMENT ACT (No. 2) 1930-1936.

SALES TAX ASSESSMENT ACT (No. 3) 1930-1936.

SALES TAX ASSESSMENT ACT (No. 4) 1930-1936.

SALES TAX ASSESSMENT ACT (No. 5) 1930-1939.

SALES TAX ASSESSMENT ACT (No. 6) 1930-1936.

SALES TAX ASSESSMENT ACT (No. 7) 1930-1936.

SALES TAX ASSESSMENT ACT (No. 8) 1930-1936.

SALES TAX ASSESSMENT ACT (No. 9) 1930-1946.

4484.—PRICE 3s. 3D.

SALES TAX ASSESSMENT ACT (No. 1) 1930-1953.*

An Act relating to the Imposition, Assessment and Collection of a Tax upon the Sale Value of Goods manufactured in Australia and sold by the Manufacturer, or applied to his own use, and for other purposes.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

PART I.—PRELIMINARY.

Short title.
Short title amended: No. 32, 1918, s. 2.

1. This Act may be cited as the *Sales Tax Assessment Act* (*No.* 1) 1930–1953.*

Parts.

2. This Act is divided into Parts, as follows :—

Part I.—Preliminary.
Part II.—Administration.
Part III.—Registration and Certificates.
Part IV.—Liability to Taxation.
Part V.—Returns.
Part VI.—Collection and Recovery of Tax.
Part VII.—Objections and Appeals.
Part VIII.—Penal Provisions.
Part IX.—Taxation Prosecutions.
Part X.—Miscellaneous.

* The *Sales Tax Assessment Act* (*No.* 1) 1930–1953 comprises the *Sales Tax Assessment Act* (*No.* 1) 1930 as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table :—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
Sales Tax Assessment Act (*No.* 1) 1930	1930 No. 25	18th August, 1930 ..	18th August, 1930
Sales Tax Assessment Act (*No.* 1A) 1930	1930, No. 62	16th December, 1930..	18th August, 1930
Sales Tax Assessment Act (*No.* 1) 1931	1931, No. 25	10th August, 1931 ..	10th August, 1941
Sales Tax Assessment Act (*No.* 1) 1932	1932, No. 39	5th October, 1932 ..	5th October, 1932
Financial Relief Act 1932 ..	1932, No. 64	5th December, 1932 ..	5th December, 1932
Financial Relief Act 1933 ..	1933, No. 17	26th October, 1933 ..	26th October, 1933
Sales Tax Assessment Act (*No.* 1) 1933	1933, No. 47	12th December, 1933..	12th December, 1933
Financial Relief Act 1934 ..	1934, No. 16	1st August, 1934 ..	1st August, 1934
Sales Tax Assessment Act (*No.* 1) 1934	1934, No. 29	4th August, 1934 ..	4th August, 1934
Sales Tax Assessment Act (*No.* 1) 1935	1935, No. 8	10th April, 1935 ..	10th April, 1935
Sales Tax (*Financial Relief*) *Act* 1935	1935, No. 45	25th October, 1935 ..	25th October, 1935
Sales Tax (*Securities and Exemptions*) Act 1935	1935, No. 61	7th December, 1935 ..	7th December, 1935
Sales Tax Amendment Act 1936	1936, No. 78	7th December, 1936 ..	7th December, 1936
Sales Tax Assessment Act (*No.* 1) 1940	1940, No. 30	1st June, 1940 ..	1st June, 1940
Sales Tax Assessment Act (*No.* 1A) 1940	1940, No. 64	13th December, 1940..	22nd November, 1940
Sales Tax Assessment Act (*No.* 1) 1942	1942, No. 54	6th October, 1942 ..	30th October, 1941
Taxation Administration Act 1953	1953, No. 1	4th March, 1953 ..	1st April, 1953

Definitions.

Sub-section (1.) amended by No. 62, 1930, s. 3; No. 33, 1932, s. 2; No. 47, 1933, s. 2; No. 29, 1934, s. 2; No. 78, 1936, s. 5; No. 54, 1942, s. 3; and No. 1, 1953, s. 2 and First Schedule.

3.—(1.) In this Act, unless the contrary intention appears—

"Agent" includes every person who in Australia, for or on behalf of any person out of Australia (in this section called "the principal"), holds or has the management or control of the business of his principal, and every person declared by the Commissioner to be an agent or the sole agent for any person for the purposes of this Act;

"Board of Review" means a Board of Review constituted under the *Income Tax Assessment Act* 1922–1929;

"Certificate" means a certificate of registration under this Act;

"Company" includes all bodies or associations corporate or unincorporate, but does not include partnerships;

"Deputy Commissioner" means a Deputy Commissioner of Taxation;

"Goods"* includes commodities, but does not include—

(*a*) goods which have, either through a process of retailing or otherwise, gone into use or consumption in Australia; or

(*b*) goods which are sold as second-hand goods and are manufactured exclusively or principally from goods which—

(i) have, whether alone or as parts of other goods, gone into use or consumption in Australia; and

(ii) in the opinion of the Commissioner, in their condition as parts of the goods so manufactured, retain their character as goods or parts of goods which have gone into use or consumption in Australia.

For the purposes of this definition a container, which is used for the first time in Australia in the marketing or delivery of goods, shall not, by reason of that use, be deemed to have gone into use or consumption in Australia until the goods for the marketing or delivery of which the container has been so used have been removed therefrom for use, sale or other disposition separately from the container;

"Liquidator" means the person who, whether or not appointed as liquidator, is the person required by law to carry out the winding-up of a company;

"Manufacture" includes—

(*a*) production;

* By sub-section (2.) of section 5 of the *Sales Tax Amendment Act* 1936, the amendment made to this definition by sub-section (1.) of that section is deemed to have commenced on 13th December, 1934.

(*b*) the combination of parts or ingredients whereby an article or substance is formed which is commercially distinct from those parts or ingredients, except such combination (not being a combination whereby concrete, cement mortar, lime mortar or any similar preparation of a kind used in the construction, repair or maintenance of buildings or other structures is formed, or whereby any other prescribed article or substance is formed) as, in the opinion of the Commissioner, it is customary or reasonably practicable for users or consumers of those articles or substances to undertake: and

(*c*) any treatment applied to foodstuffs as a process in the preparation of the foodstuffs for human consumption;

"Manufactured" and "Manufactures" have meanings corresponding to that of "Manufacture";

"Manufacturer" means a person who engages, whether exclusively or not, in the manufacture of goods, and includes a printer, publisher, lithographer or engraver, and a person (not being an employee) who manufactures goods, whether or not the materials out of which the goods are manufactured are owned by him, but, where one person manufactures goods for another, wholly or in part out of materials supplied by that other, and the goods are not for the use of, but are for sale by, that other, the person supplying the materials shall be deemed to be the manufacturer, and the person who so manufactures the goods shall be deemed not to be the manufacturer;

"Person" includes a company;

"Registered person" means a manufacturer or wholesale merchant who is registered under this Act;

"Sale of goods by wholesale" includes—

(i) a sale of goods to a person who buys the goods for the purpose of resale or for supply to some other person in the circumstances specified in sub-section (4.) of this section; and

* * * * *

(iii) a sale of goods to a manufacturer (whether or not he is required to be registered in accordance with the provisions of this Act) to be used in, wrought into or attached to goods to be manufactured by him;

Sales Tax Assessment Act (*No.* 1) 1930–1953.

but, notwithstanding anything contained in the foregoing provisions of this definition, does not include—

* * * * * * *

(*b*) the sale of goods, by a retailer, whether or not at a discount from the retail selling price, for the accommodation of the purchaser owing to temporary shortage of stock of the purchaser such goods being of a kind usually manufactured by the purchaser or usually purchased by him from a manufacturer or wholesale merchant for sale;

(*c*) the sale of goods by a retailer on cash orders issued by firms or persons carrying on the business of issuing cash orders authorizing or requesting goods to be supplied to the holders of such cash orders;

(*d*) the sale whether for cash or on credit, and whether at a discount from the retail selling price or not, of goods of a kind used in the construction and repair of and wrought into or attached to so as to form part of buildings, unless such goods are sold to a person (not being a person who buys goods for supply to some other person in the circumstances specified in sub-section (4.) of this section) who buys the goods for the purpose of resale;

(*e*) the sale by a retailer, whether for cash or on credit, and whether at a discount from the retail selling price or not, of goods of a kind used in the manufacture of and wrought into or attached to clothes for human wear, if the sale is made to a person whose principal business is the manufacture of articles of human wear to the order of individual customers;

(*f*) the supply of goods by a person to some other person in the circumstances specified in sub-section (4.) of this section; and

(*g*) the sale of school requisites or sporting equipment by a retailer to school authorities or school teachers for resale to students or the sale of sporting equipment by a retailer to sporting clubs for resale to members of those clubs,

and any sale or supply of goods as specified in paragraph (*b*), (*c*), (*d*), (*e*), (*f*) or (*g*) of this definition shall be deemed to be a sale of goods by retail.

For the purposes of this definition "retailer" means a person whose sales of goods (not including sales to which paragraphs (*b*), (*c*), (*e*) or (*g*) of this definition applies) are, in the opinion of the Commissioner, made principally by retail and "sale of goods by a retailer" means a sale of goods from stock in a retail store or a retail section of a store.

"Taxpayer" means a person chargeable with sales tax under this Act;

"the Commissioner" means the Commissioner of Taxation;

"the Second Commissioner" means the Second Commissioner of Taxation;

"Trustee", in addition to every person appointed or constituted trustee by act of parties, by order or declaration of a court, or by operation of law, includes—

(*a*) an executor or administrator, guardian, committee, receiver or liquidator; and

(*b*) every person having or taking upon himself the administration or control of goods affected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control or management of the goods of a person under any legal or other disability;

"Unregistered person" means a person who is not registered under this Act;

"Wholesale Merchant" means a person who engages, whether exclusively or not, in the sale of goods by wholesale, and includes—

(*a*) a trustee in whom the ownership of the business of any wholesale merchant or manufacturer becomes vested, or who becomes entitled to the possession, management or control of that business or of the goods of that business, and who sells those goods, whether in the course of carrying on or in the course of winding-up or realizing that business;

(*b*) a person who notwithstanding that he manufactures goods for another person is, pursuant to the definition of "Manufacturer", deemed not to be the manufacturer of the goods; and

(*c*) a person who applies any process or treatment to goods which are—

(i) to be used in, wrought into or attached to goods to be manufactured by a manufacturer;

(ii) supplied to him by the manufacturer of those goods for the purpose of having them brought into the form or condition in which they are to be marketed or used or further processed or treated by the manufacturer; or

(iii) to be exported from Australia and which are to be used in, wrought into or attached to goods to be manufactured outside Australia.

(2.) For the purpose of this Act, a person shall be deemed to have quoted his certificate where, in any transaction, act or operation in

relation to goods the sale value of which is subject to tax, he represents in the prescribed manner that he is the holder of a certificate issued under this Act.

(3.) Any reference in this Act to the amount for which goods are sold shall, where the goods are sold subject to the payment of a royalty, be deemed to include such amount as, in the opinion of the Commissioner, is the value of the royalty.

Added by No. 30, 1932, s. 2; amended by No. 78, 1936, s. 5.

(4.) For the purposes of this Act, a person shall be deemed to have sold goods if, in the performance of any contract (not being a contract for the sale of goods) under which he has received, or is entitled to receive, valuable consideration, he supplies goods the property in which (whether as goods or in some other form) passes, under the terms of the contract, to some other person.

Added by No. 29, 1934, s. 2; substituted by No. 64, 1940, s. 3.

(5.) *Where a sale and purchase, for one inclusive price, is made of goods upon the sale value of which sales tax is payable at a particular rate together with goods upon the sale value of which sales tax is payable at some other rate or is not payable, the respective amounts for which the goods are sold and purchased shall be deemed to be the amounts which, in the opinion of the Commissioner, would have been the sale prices of those goods if sold separately.

Added by No. 29, 1934, s. 2; substituted by No. 64, 1940, s. 3.

(6.) *For the purposes of the last preceding sub-section, "goods" (in so far as that word refers to goods upon the sale value of which sales tax is not payable) shall include any property on which sales tax is not payable.

Added by No. 78, 1936, s. 5.

(7.) Any person who, at any time, ceases to be a manufacturer or wholesale merchant shall be deemed to continue to be a manufacturer or a wholesale merchant (as the case may be) until he has—

(*a*) sold;
(*b*) treated as stock for sale by retail;
(*c*) applied to his own use; or
(*d*) leased

the goods held in stock by him at that time or until the Commissioner is satisfied that none of those goods will become the subject of any transaction, act or operation specified in this sub-section.

Added by No. 78, 1936, s. 5.

(8.) †Where a person manufactures goods of the kind covered by paragraph (*b*) of the definition of "Goods" partly out of materials which have not gone into use or consumption in Australia, that person shall, in the manufacture of those goods, be deemed to have applied those materials to his own use.

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* These sub-sections were inserted by paragraph (*b*) of sub-section (1.) of section 2 of the *Sales Tax Assessment Act (No. 1) 1934*. Sub-section (3.) of that section reads—

"(3.) The amendment effected by paragraph (*b*) of sub-section (1.) of this section shall have effect and be deemed to have had effect at all times as if the sub-sections thereby inserted in section three of the Principal Act had, at the date of the commencement of the *Sales Tax Assessment Act (No. 1) 1930*, been included in section three of that Act:

Provided that the amendment shall not have effect in respect of any sale and purchase, prior to the twenty-sixth day of October, One thousand nine hundred and thirty-three, for one inclusive price, of goods, being plant, machinery or equipment which has been used as such by the vendor in the ordinary course of his business, together with any other property.".

† This sub-section was amended by sub-section (1.) of section 5 of the *Sales Tax Amendment Act 1936*. By sub-section (2.) of that section, that amendment is deemed to have commenced on 13th December, 1934.

in the performance of his duties under this Act except as may be necessary for the purpose of carrying into effect the provisions of this Act.

PART III.—REGISTRATION AND CERTIFICATES.

Issue of certificates.

11.—(1.) *Every person who is, at the commencement of this Act, a manufacturer or wholesale merchant shall, within twenty-eight days after that commencement, become registered as prescribed.

Sub-section (1.) amended by No. 25, 1931, s. 2; and No. 61, 1935, s. 2.

(2.) *Every person who becomes a manufacturer or wholesale merchant after the commencement of this Act shall, within twenty-eight days after he becomes a manufacturer or wholesale merchant, become registered as prescribed.

Amended by No. 25, 1931, s. 2; and No. 61, 1935, s. 2.

(3.) Upon registration a certificate of registration shall be issued to such manufacturer or wholesale merchant and shall, subject to this Act, remain in force until—

Amended by No. 25, 1931, s. 2.

(*a*) the death or bankruptcy of the registered person; or

(*b*) the cancellation of the certificate in accordance with the provisions of this Act.

Inserted by No. 78, 1936, s. 6.

(3A.) Notwithstanding anything contained in this Act, the Commissioner may, if he thinks fit, dispense with the registration, or cancel the certificate of registration, of any person who is a manufacturer or wholesale merchant and is engaged only in transactions, acts or operations in connexion with which sales tax is not payable by him:

Provided that if that person subsequently commences to engage in transactions, acts or operations in connexion with which sales tax is payable by him, he shall forthwith become registered as prescribed:

Provided further, and without limiting the application of the last preceding proviso, that in the case of any person whose registration has been so dispensed with or whose certificate of registration has been so cancelled, and who is a wholesale merchant by virtue of paragraph (*b*) or (*c*) of the definition of "Wholesale merchant", the Commissioner may, if he thinks fit, at any time while that person continues to be a wholesale merchant by virtue of either of those paragraphs, by notice in writing require that person to become registered and that person shall become registered as prescribed within the time specified in that notice.

Substituted by No. 25, 1931, s. 2; amended by No. 78, 1936, s. 6.

(4.) Notwithstanding any statement contained in any certificate in force at the date of the commencement of this sub-section in regard to the period for which the certificate shall remain in force, every certificate in force at that date shall, subject to sub-section (3A.) of this section and section sixteen of this Act, remain in force until the death or bankruptcy of the registered person to whom it was issued.

* Sub-sections (1.), (2.), (4B.), (8A.), (8B.) and (11.) of this section were amended, and sub-section (4A.) of this section was omitted, by sub-section (1.) of section 2 of the *Sales Tax (Securities and Exemptions) Act* 1935. Sub-section (2.) of that section reads—

"(2.) Nothing in this section shall affect the liability of any person under any security given under the Principal Act and in force immediately prior to the commencement of this Act in so far as that liability directly or indirectly relates to tax payable in respect of transactions, acts or operations entered into, done or carried out prior to the commencement of this Act, but otherwise no liability shall attach to any person under any such security.".

SALES TAX ASSESSMENT ACT (NO. 5) 1930-1939.*

An Act relating to the Imposition Assessment and Collection of a Tax upon the Sale Value of Goods Imported into Australia, and for other purposes.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—PRELIMINARY.

Short title.

1. This Act may be cited as the *Sales Tax Assessment Act (No. 5) 1930-1939.**

Short title amended No. 22, 1918, s. 2.

Parts.

2. This Act is divided into Parts, as follows:—

Part I.—Preliminary.

Part II.—Liability to Taxation.

Part III.—Entries.

Part IV.—Collection and Recovery of Tax.

Part V.—Application of *Sales Tax Assessment Act (No. 1) 1930.*

Part VI.—Miscellaneous.

PART II.—LIABILITY TO TAXATION.

Sales tax.

Amended by No. 67, 1936, s. 2.

3. Subject to, and in accordance with the provisions of this Act, the sales tax imposed by the *Sales Tax Act (No. 5) 1930* shall be

* The *Sales Tax Assessment Act (No. 5) 1930-1939* comprises the *Sales Tax Assessment Act (No. 5) 1930* as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table:—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
Sales Tax Assessment Act (No. 5) 1930	1930, No. 33	16th August, 1930	18th August, 1930
Sales Tax Assessment Act (No. 5a) 1930	1930, No. 67	16th December, 1930	18th August, 1930
Sales Tax Assessment Act (No. 5) 1931	1931, No. 33	10th August, 1931	10th August, 1931
Sales Tax Assessment Act (No. 5) 1932	1932, No. 43	5th October, 1932	5th October, 1932
Financial Relief Act 1932	1932, No. 64	5th December, 1932	5th December, 1932
Financial Relief Act 1933	1933, No. 17	26th October, 1933	26th October, 1933
Sales Tax Assessment (New Zealand Imports) Act 1933	1933, No. 25	24th November, 1933	1st December, 1933
Sales Tax Assessment Act (No. 5) 1933	1933, No. 51	12th December, 1933	12th December, 1933
Financial Relief Act 1934	1934, No. 16	1st August, 1934	1st August, 1934
Sales Tax Assessment (Fiji Imports) Act 1934	1934, No. 62	17th December, 1934	17th January, 1935
Sales Tax (Financial Relief) Act 1935	1935, No. 45	25th October, 1935	25th October, 1935
Sales Tax (Securities and Exemptions) Act 1935	1935, No. 61	7th December, 1935	7th December, 1935
Sales Tax Amendment Act 1936	1936, No. 78	7th December, 1936	7th December, 1936
Sales Tax Assessment Act (No. 5) 1939	1939, No. 28	21st September, 1939	1st October, 1939

levied and paid on the sale value of goods imported into Australia by a taxpayer on or after the first day of August One thousand nine hundred and thirty.

Sale value of imported goods. Sub-section (1.) amended by No. 26, 1939, s. 3.

4.—(1.) For the purposes of this Act, the sale value of goods imported into Australia on or after the first day of August One thousand nine hundred and thirty—

(*a*) by an unregistered person; or

(*b*) by a registered person who does not quote his certificate on the Customs entry relating to the goods,

shall be an amount which exceeds by twenty per centum the sum of the following:—

(i) the value for duty of those goods converted into Australian currency; and

(ii) the duty of Customs payable in respect of the goods.

Amended by No. 33, 1931, s. 2; and No. 26, 1939, s. 3.

(2.)* For the purposes of this section, "value for duty" means—

(*a*) where the goods are subject to an ad valorem duty upon importation into Australia under the law relating to duties of Customs—the value ascertained in accordance with that law for the purpose of calculating that duty; and

(*b*) where the goods are not so subject—the value upon which, in the opinion of the Commissioner, an ad valorem duty would have been calculated if the goods had been so subject:

Provided that, pending the ascertainment of the value required to be ascertained under paragraph (*a*) or (*b*) of this sub-section, the value for duty of the goods to which this section applies shall be taken to be the value at which the goods are entered for home consumption under the law relating to the Customs:

Provided further that, in the case of goods in respect of which a Customs entry has been passed, and which have subsequently been sent out of the Commonwealth for repairs with the approval of the Minister for Trade and Customs, the sale value of the goods upon their re-importation into Australia shall be the sum of the value for duty of the goods converted into Australian currency and the duty of Customs payable in respect of the goods.

Added by No. 26, 1939, s. 3.

(3.) For the purposes of this section the rate of exchange to be used in converting the value for duty into Australian currency shall be the telegraphic transfer selling rate in Australia, at the date of exportation of the goods from the country of export, as fixed by the Commonwealth Bank of Australia.

* This sub-section was amended by section 2 of the *Sales Tax Assessment Act (No. 5) 1931*. By section 5 of that Act, that amendment is deemed to have commenced on the date of the commencement of the *Sales Tax Assessment Act (No. 5) 1930*.

Liability for tax.

5. Sales tax shall be paid by the importer of goods the sale value of which is specified in sub-section (1.) of section four of this Act.

Exemptions. Substituted by No. 61, 1935, s. 8.

6.* Notwithstanding anything contained in section five of this Act, sales tax shall not be payable under this Act by the person specified in that section upon the sale value of goods the sale value of which is, by virtue of the *Sales Tax Exemptions Act* 1935, exempt from sales tax under this Act.

Refund of tax in certain cases where goods re-exported. Inserted by No. 33, 1931, s. 3. Sub-section (1.) amended by No. 51, 1933, s. 2.

6A.†—(1.) Sales tax payable in respect of imported goods entered for home consumption under the law relating to the Customs may, in prescribed cases, be paid to the Collector of Customs and retained by him on deposit for a period not exceeding twelve months.

(2.) If the goods are exported from Australia by the taxpayer within such time as is prescribed, the Collector may return to the taxpayer the amount deposited.

(3.) If the goods are not exported as specified in the last preceding sub-section, the Collector shall pay the amount deposited into the Consolidated Revenue Fund.

Added by No. 78, 1936, s. 33.

(4.) In lieu of payment and retention on deposit of tax pursuant to sub-section (1.) of this section the Collector may, in any case in which he thinks fit, accept such security as he deems sufficient as security that within the prescribed time the taxpayer will—

(*a*) export the goods from Australia; or

(*b*) pay the sales tax payable in respect of the goods.

Added by No. 78, 1936, s. 33.

(5.) The provisions of the *Customs Act* 1901-1935 (including any regulations made under that Act) relating to securities shall apply to a security under the last preceding sub-section as if that security were a security for compliance with that Act.

Part III.—Entries.

Entries.

7.—(1.) Where any person imports into Australia goods to the importation of which section four of this Act applies, he shall, at the time of the entry of the goods under the law relating to the Customs, lodge, for the purposes of this Act, with the Collector of Customs at the port of importation, an entry in the prescribed manner and form.

(2.) For the purposes of the section, the expression "Collector of Customs" has the same meaning as it has in the *Customs Act* 1901-1930.

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* This section was substituted by section 8 of the *Sales Tax (Securities and Exemptions) Act* 1935. Section 18 of that Act affects the operation of that amendment and is set out in the footnote on p. 19 of this reprint.

† This section was inserted by section 3 of the *Sales Tax Assessment Act* (*No.* 5) 1931. By section 5 of that Act, section 6A of this Act is deemed to have commenced on the date of the commencement of the *Sales Tax Assessment Act* (*No.* 5) 1930.

Added by No. 51, 1933, s. 4.

(2.) Where sales tax has been paid under this Act in respect of goods which are not subject to import duty, and, in the opinion of the Collector of Customs, drawback of duty would have been allowable under section one hundred and sixty-eight of the *Customs Act* 1901-1930 and the regulations thereunder if the goods had been subject to such duty, drawback of the sales tax so paid shall be allowed and the provisions of the *Customs Act* 1901-1930 and the regulations thereunder, in relation to drawback of import duty, shall apply in respect of drawback of sales tax as if the goods had been subject to import duty.

PART V.—APPLICATION OF SALES TAX ASSESSMENT ACT (No. 1) 1930.

Application of provisions of *Sales Tax Assessment Act* (*No.* 1) 1930.

Sub-section (1.) amended by No. 78, 1936, s. 38.

12.—(1.) The following Parts, sections and sub-sections of the *Sales Tax Assessment Act* (*No.* 1) 1930-1936, namely, section three, Parts II. and III., sub-sections (5B.) and (5C.) of section eighteen, section twenty-three, sections twenty-seven to thirty-nine inclusive, and Parts VII., VIII., IX. and X., and the Second Schedule, shall *mutatis mutandis* apply in relation to the imposition, assessment and collection of the tax chargeable under this Act in like manner as they apply in relation to the imposition, assessment and collection of the tax chargeable under that Act, but for the purposes of this Act—

(*a*) section eleven of the *Sales Tax Assessment Act* (*No.* 1) 1930 shall be read as if sub-sections (7.) and (8.) were omitted and the following sub-section inserted in their stead:—

"(7.) In respect only of the period commencing on the first day of August One thousand nine hundred and thirty and ending on the expiration of twenty-eight days after the commencement of this Act the following provisions shall apply:—

(*a*) Any person required by this Act to be registered shall be deemed to be a registered person until in fact so registered;

(*b*) every person so deemed to be a registered person shall upon every importation of goods by him for the purpose of sale or for use in the manufacture of goods for sale certify in writing to the Collector of Customs on the entry of those goods that the goods have been imported for that purpose;

(*c*) where in respect of any importation of goods the importer does not so certify he shall be deemed for the purposes of this Act not to have quoted his certificate in respect of the importation of those goods.";

SALES TAX ASSESSMENT ACT (NO. 6) 1930-1936.*

Title amended by No. 44. 1932. s. 2.

An Act relating to the Imposition, Assessment and Collection of a Tax upon the Sale Value of Goods imported into Australia and sold by the Importer, or applied to his own use, and for other purposes.

BE it enacted by the King's Most Excellent Majesty, the Senate and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—PRELIMINARY.

Short title

Short title amended: No. 32. 1918. s. 2.

1. This Act may be cited as the *Sales Tax Assessment Act (No. 6) 1930-1936.**

Parts

2. This Act is divided into Parts, as follows:—

Part I.—Preliminary.
Part II.—Liability to Taxation.
Part III.—Returns.
Part IV.—Collection and Recovery of Tax.
Part V.—Application of *Sales Tax Assessment Act (No. 1) 1930.*

PART II.—LIABILITY TO TAXATION.

Sales tax

Amended by No. 68. 1930. s. 3; and No. 44. 1932. s. 3.

3. Subject to, and in accordance with, the provisions of this Act, the sales tax imposed by the *Sales Tax Act (No. 6) 1930* shall be levied and paid upon the sale value of goods imported into Australia by a taxpayer—

(a) either before or after the commencement of this Act and sold by him on or after the first day of August. One thousand nine hundred and thirty; or

* The *Sales Tax Assessment Act (No. 6) 1930-1936* comprises the *Sales Tax Assessment Act (No. 6) 1930* as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table:—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
Sales Tax Assessment Act (No. 6) 1930	1930, No. 35	18th August, 1930	18th August, 1930
Sales Tax Assessment Act (No. 6A) 1930	1930, No. 68	18th December, 1930	18th August, 1930
Sales Tax Assessment Act (No. 6) 1931	1931, No. 35	10th August, 1931	10th August, 1931
Sales Tax Assessment Act (No. 6) 1932	1932, No. 44	5th October, 1932	5th October, 1932
Financial Relief Act 1932	1932, No. 64	5th December, 1932	5th December, 1932
Financial Relief Act 1933	1933, No. 17	26th October, 1933	26th October, 1933
Sales Tax Assessment (New Zealand Imports) Act 1933	1933, No. 25	24th November, 1933	1st December, 1933
Sales Tax Assessment Act (No. 6) 1933	1933, No. 52	12th December, 1933	12th December, 1933
Financial Relief Act 1934	1934, No. 16	1st August, 1934	1st August, 1934
Sales Tax Assessment (Fiji Imports) Act 1934	1934, No. 62	17th December, 1934	17th January, 1935
Sales Tax (Financial Relief) Act 1935	1935, No. 45	25th October, 1935	25th October, 1935
Sales Tax (Securities and Exemptions) Act 1935	1935, No. 61	7th December, 1935	7th December, 1935
Sales Tax Amendment Act 1936	1936, No. 78	7th December, 1936	7th December, 1936

(*b*) after the commencement of this Act, and applied by him to his own use on or after the date of the commencement of the *Sales Tax Act (No. 6) 1932.*

Sale value of goods.

Sub-section (1.) amended by No. 26, 1931, s. 2; and No. 44, 1932, s. 4.

4.*—(1.) For the purposes of this Act, the sale value of goods which are sold on or after the first day of August One thousand nine hundred and thirty shall be the amount for which those goods are sold by a registered person, or a person required to be registered, who imported those goods, to an unregistered person or to a registered person who has not quoted his certificate in respect of the purchase of those goods:

†Provided that where goods are sold by retail by a registered person who has quoted his certificate when importing the goods the sale value of the goods shall be the amount which would be the fair market value of those goods if sold by him by wholesale, but if the Commissioner is of opinion that the amount set forth in any return by the registered person as the sale value of any such goods is less than the amount which which would be their fair market value if sold by wholesale, the Commissioner may alter the amount set forth in the return to the amount which, in his opinion, would be the fair market value of the goods if sold by wholesale, and the amount as so altered shall be the sale value of the goods for the purposes of this Act.

Inserted by No. 44, 1932, s. 4.

(1A.) For the purposes of this Act the sale value of goods imported by a registered person who quoted his certificate on the Customs entry relating to those goods, and who applies those goods to his own use, shall be the amount which would have been the sale value of those goods for purposes of the *Sales Tax Assessment Act (No. 5) 1930-1931* if that person had not so quoted his certificate.

Sub-section (2.) omitted by No. 78, 1936, s. 37.

Substituted by No. 26, 1931, s. 2; amended by No. 78, 1936, s. 37

(3.)† For the purposes of this section, the sale value of goods shall not be increased by‡ any amount payable in respect of sales tax, but, when the goods are sold either in bond or while otherwise subject to the control of the Customs, the sale value shall be increased by‡ the amount of any duty of Customs to which the goods would be subject if entered for home consumption at the time at which they are sold.

(4.) In the case of goods delivered on or after the first day of August One thousand nine hundred and thirty under a contract of sale made on or after the tenth day of July One thousand nine

* This section was amended by section 4 of the *Sales Tax Assessment Act (No. 6) 1932.* By section 5 of the *Sales Tax Assessment Act (No. 6) 1933*, this amendment is deemed to have commenced on the date of the commencement of the *Sales Tax Assessment Act (No. 6) 1930.*

† Sub-section (1.) of this section was amended, and sub-section (3.) of this section was substituted, by section 2 of the *Sales Tax Assessment Act (No. 6) 1931.* By section 7 of that Act the amendments made by section 2 of that Act are deemed to have commenced on 11th July, 1931.

‡ This sub-section was amended by paragraph (*c*) of sub-section (1.) of section 37 of the *Sales Tax Amendment Act 1936.* By sub-section (2.) of that section the amendment effected by that paragraph is deemed to have commenced on 11th July, 1931. That amendment omitted from this sub-section the words "taken to include" and inserted in their stead the words "increased by". The words "taken to include" occurred twice in this sub-section and, in this reprint, the amendment has been made in both cases where those words occurred.

hundred and thirty and before the first day of August One thousand nine hundred and thirty the goods shall, for the purposes of this Act, be deemed to have been sold on the date of their delivery.

Liability for tax.

5. Sales tax shall be paid by the importer of goods the sale value of which is specified in the last preceding section.

Amended by No. 44, 1932, s. 5.

Rebates.

Inserted by No. 35, 1931, s. 3.

5A.*—(1.) Where a registered person has quoted his certificate in respect of goods imported by him prior to the eleventh day of July, One thousand nine hundred and thirty-one, he shall be entitled, in respect of any sale of those goods by retail made by him on or after that date, to a rebate of tax of the difference between the amount of tax payable by him in respect of that sale and the amount of tax which would have been payable if the rate of tax payable in respect of such sale had been two and one-half per centum of the sale value of the goods.

Added by No. 44, 1932, s. 6.

(2.) Where, upon the death or bankruptcy of a registered person to whom this section applies, or otherwise by devolution of the estate of that person, the ownership of goods purchased as specified in this section becomes vested in some other person, that other person shall, if he becomes liable to pay tax in respect of any sale by retail of those goods, be entitled to a rebate of that tax to the extent specified in this section.

Exemptions.

Substituted by No. 61, 1935, s. 9.

6.† Notwithstanding anything contained in section five of this Act, sales tax shall not be payable under this Act by the person specified in that section upon the sale value of goods the sale value of which is, by virtue of the *Sales Tax Exemptions Act* 1935, exempt from sales tax under this Act.

Part III.—Returns.

Returns, &c.

Substituted by No. 44, 1932, s. 7; amended by No. 52, 1933, s. 2.

7. Every person who, during any month—

(*a*) makes any of the sales specified in sub-section (1.) of section four of this Act; or

(*b*) applies to his own use any goods specified in sub-section (1A.) of section four of this Act,

shall, within twenty-one days after the close of that month, furnish to the Commissioner a return of those sales or, as the case may be, of those goods in the prescribed form, setting forth such information as is prescribed or is required for the due completion of that form.

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* This section was inserted by section 3 of the *Sales Tax Assessment Act (No. 6)* 1931. By section 7 of that Act, this section is deemed to have commenced on 11th July, 1931.

† This section was substituted by section 9 of the *Sales Tax (Securities and Exemptions) Act* 1935. Section 18 of that Act, affects the operation of this amendment and is set out in the footnote on p. 19 of this reprint.

the Commissioner may, if so satisfied—

(i) within a period of three years; or

(ii) on consideration of a claim in writing lodged with the Commissioner within a period of three years,

from the date on which the goods were so sold, pay to that registered person an amount equal to the tax so paid and included.

Added by No. 44, 1932, s. 9; amended by No. 61, 1935, s. 18.

(3.) Where goods are sold by any person to the Government of the Commonwealth or the Government of a State, and the Commissioner is satisfied—

(*a*) that the goods are for the official use of a Government Department or of an authority specified in item 74 in the Schedule to the *Sales Tax Exemptions Act* 1935. and are not for re-sale, and, in the case of goods sold to the Government of a State, an arrangement of the kind specified in that item has been made between the Governor-General and the Governor of the State,

(*b*) that tax has been paid or is payable under this Act in respect of some prior act, operation or transaction in relation to those goods, or goods used in, wrought into or attached to those goods,

(*c*) that the amount of that tax has been paid or is payable by the person who so sold the goods, or has been wholly or partly included in the price for which that person purchased those goods, or the goods used in, wrought into or attached to those goods, and

(*d*) that the amount of that tax has been excluded wholly or in part from the price for which the goods were sold by that person to the Government or Government authority,

the Commissioner may refund or pay to that person the amount which, in the opinion of the Commissioner, was so excluded.

Added by No. 52, 1933, s. 4.

(4.) Notwithstanding anything contained in this section, if, either before or after the commencement of this sub-section, any alteration is made in the rate of sales tax payable in respect of any goods, no refund, repayment or reduction shall, by reason of that alteration, be made of any amount paid or payable by any person as sales tax in respect of goods sold by a taxpayer or applied by him to his own use before the date of assent to the law making the alteration.

Part V.—Application of Sales Tax Assessment Act (No. 1) 1930.

Application of provisions of *Sales Tax Assessment Act No.* 1) 1930.

Sub-section (1.) amended by No. 78, 1936, s. 40.

12.—(1.) The following Parts, sections and sub-sections of the *Sales Tax Assessment Act* (*No.* 1) 1930-1936, namely, section three, Parts II. and III., sub-sections (4.), (5B.) and (5C.) of section eighteen, section twenty-three, sections twenty-seven to thirty-nine,

inclusive, and Parts VII., VIII., IX. and X., and the Second Schedule shall *mutatis mutandis* apply in relation to the imposition, assessment and collection of the tax chargeable under this Act in like manner as they apply in relation to the imposition, assessment and collection of the tax chargeable under that Act, but for the purposes of this Act—

(*a*) sub-section (4.) of section eighteen of the *Sales Tax Assessment Act* (*No.* 1) 1930-1936 shall be read as if the words "sub-section (1.) of section four of this Act" were substituted for the words "sub-section (1.) of this section";

(*b*) section twenty-nine of the *Sales Tax Assessment Act* (*No.* 1) 1930-1936 shall be read as if the words "section nine or ten of this Act" were substituted for the words "section twenty-four or twenty-five of this Act" (wherever occurring); and

(*c*) sub-section (2.) of section thirty-five of the *Sales Tax Assessment Act* (*No.* 1) 1930-1936 shall be read as if the words "Part III. of this Act" were substituted for the words "Part V. of this Act".

(2.) The power to make regulations, conferred by the application, by the last preceding sub-section, of section seventy-three of Part X. of the *Sales Tax Assessment Act* (*No.* 1) 1930, shall include the power to make regulations for enabling registrations, certificates and securities made, issued or given for the purposes of that Act, to be treated as, or to be deemed to be, made, issued or given for the purposes also of this Act, and shall include the power generally to make regulations for treating acts, matters and things done, for the purposes of the *Sales Tax Assessment Act* (*No.* 1) 1930, under the sections and Parts of that Act made applicable to this Act, as done or deemed to be done under this Act.

* * * * * * * *

Schedule repealed by No. 61, 1935, s. 17.*

* The Schedule, which exempted certain goods from sales tax, was repealed by section 17 of the *Sales Tax (Securities and Exemptions) Act* 1935. Section 18 of that Act affects the operation of that repeal and is set out in the footnote on p. 19 of this reprint.

For the goods which are now exempted from sales tax *see* the *Sales Tax (Exemptions and Classifications) Act* 1935-1937.

SALES TAX ASSESSMENT ACT (NO. 7) 1930-1936.*

79

An Act relating to the Imposition, Assessment and Collection of a Tax upon the Sale Value of Goods imported into Australia and sold by a person other than the Importer, and for other purposes.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—PRELIMINARY.

Short title.

1. This Act may be cited as the *Sales Tax Assessment Act (No. 7) 1930-1936.**

Short title amended: No. 32, 1936, s. 2.

Parts.

2. This Act is divided into Parts, as follows:—

Part I.—Preliminary.
Part II.—Liability to Taxation.
Part III.—Returns.
Part IV.—Collection and Recovery of Tax.
Part V.—Application of *Sales Tax Assessment Act (No. 1) 1930.*

PART II.—LIABILITY TO TAXATION.

Sales tax.

Amended by No. 69, 1930, s. 3.

3. Subject to, and in accordance with, the provisions of this Act, the sales tax imposed by the *Sales Tax Act (No. 7) 1930* shall be levied and paid upon the sale value of goods imported into Australia, either before or after the commencement of this Act, and sold on or after the first day of August One thousand nine hundred and thirty by a taxpayer not being the importer of the goods.

* The *Sales Tax Assessment Act (No. 7) 1930-1936* comprises the *Sales Tax Assessment Act (No. 7) 1930* as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table:—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
Sales Tax Assessment Act (No. 7) 1930	1930, No. 37	18th August, 1930 ..	18th August, 1930
Sales Tax Assessment Act (No. 7a) 1930	1930, No. 69	16th December, 1930 ..	18th August, 1930
Sales Tax Assessment Act (No. 7) 1931	1931, No. 37	10th August, 1931 ..	10th August, 1931
Sales Tax Assessment Act (No. 7) 1932	1932, No. 45	5th October, 1932 ..	5th October, 1932
Financial Relief Act 1932 ..	1932, No. 64	5th December, 1932 ..	5th December, 1932
Financial Relief Act 1933 ..	1933, No. 17	26th October, 1933 ..	26th October, 1933
Sales Tax Assessment (New Zealand Imports) Act 1933	1933, No. 25	24th November, 1933	1st December, 1933
Sales Tax Assessment Act (No. 7) 1933	1933, No. 53	12th December, 1933 ..	12th December, 1933
Financial Relief Act 1934 ..	1934, No. 16	1st August, 1934 ..	1st August, 1934
Sales Tax Assessment (Fiji Imports) Act 1934	1934, No. 62	17th December, 1934	17th January, 1935
Sales Tax (Financial Relief) Act 1935	1935, No. 45	25th October, 1935 ..	25th October, 1935
Sales Tax (Securities and Exemptions) Act 1935	1935, No. 61	7th December, 1935 ..	7th December, 1935
Sales Tax Amendment Act 1936	1936, No. 78	7th December, 1936 ..	7th December, 1936

Sale value of goods.

Sub-section (1.) amended by No. 37, 1931, s. 2; and No. 45, 1932, s. 2.

4.—(1.)* For the purposes of this Act, the sale value of goods which are sold on or after the first day of August One thousand nine hundred and thirty shall be the amount for which those goods are sold by a registered person, or a person required to be registered, not being the importer of those goods, to an unregistered person or to a registered person who has not quoted his certificate in respect of the purchase of those goods:

†Provided that, where goods are sold by retail by a registered person who has quoted his certificate when purchasing the goods, the sale value of the goods shall be the amount which would be the fair market value of those goods if sold by him by wholesale, but if the Commissioner is of opinion that the amount set forth in any return by the registered person as the sale value of any such goods is less than the amount which would be their fair market value if sold by wholesale, the Commissioner may alter the amount set forth in the return to the amount which, in his opinion, would be the fair market value of the goods if sold by wholesale, and the amount as so altered shall be the sale value of the goods for the purposes of this Act.

Sub-section (2.) omitted by No. 78, 1936, s. 42.

Substituted by No. 37, 1931, s. 2; amended by No. 78, 1936, s. 42.

(3.) For the purposes of this section, the sale value of goods shall not be increased by‡ any amount payable in respect of sales tax, but, when the goods are sold either in bond or while otherwise subject to the control of the Customs, the sale value shall be increased by‡ the amount of any duty of Customs to which the goods would be subject if entered for home consumption at the time at which they are sold.

(4.) In the case of goods delivered on or after the first day of August One thousand nine hundred and thirty under a contract of sale made on or after the tenth day of July One thousand nine hundred and thirty and before the first day of August One thousand nine hundred and thirty the goods shall, for the purposes of this Act, be deemed to have been sold on the date of their delivery.

Liability for tax.

5. Sales tax shall be paid by the vendor of goods the sale value of which is specified in the last preceding section.

Rebates.

Inserted by No. 37, 1931, s. 3.

5A.§—(1.) Where a registered person has quoted his certificate in respect of goods purchased by him prior to the eleventh day of July, One thousand nine hundred and thirty-one, he shall be entitled, in respect of any sale of those goods by retail made by him on or after that date, to a rebate of tax of the difference between

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* This sub-section was amended by section 2 of the *Sales Tax Assessment Act (No. 7) 1932*. By section 5 of the *Sales Tax Assessment Act (No. 7) 1931*, this amendment is deemed to have commenced on the date of the commencement of the *Sales Tax Assessment Act (No. 7) 1930*.

† The proviso to this sub-section was added by section 2 of the *Sales Tax Assessment Act (No. 7) 1931*. By section 7 of that Act, the amendment effected by section 2 of that Act is deemed to have commenced on 11th July, 1931.

‡ This sub-section was amended by paragraph (c) of sub-section (1.) of section 42 of the *Sales Tax Amendment Act 1936*. By sub-section (2.) of that section, the amendment effected by that paragraph is deemed to have commenced on 11th July, 1931. That amendment omitted from this sub-section the words "taken to include" and inserted in their stead the words "increased by". The words "taken to include" occurred twice in this sub-section and, in this reprint, the amendment has been made in both cases where those words occurred.

§ This section was inserted by section 3 of the *Sales Tax Assessment Act (No. 7) 1931*. By section 7 of that Act, this section is deemed to have commenced on 11th July, 1931.

(*c*) that the amount of that tax has been paid or is payable by the person who so sold the goods, or has been wholly or partly included in the price for which that person purchased those goods, or the goods used in, wrought into or attached to those goods, and

(*d*) that the amount of that tax has been excluded wholly or in part from the price for which the goods were sold by that person to the Government or Government Authority,

the Commissioner may refund or pay to that person the amount which, in the opinion of the Commissioner, was so excluded.

Added by No. 53, 1933, s. 4.

(4.) Notwithstanding anything contained in this section, if, either before or after the commencement of this sub-section, any alteration is made in the rate of sales tax payable in respect of any goods, no refund, repayment or reduction shall, by reason of that alteration, be made of any amount paid or payable by any person as sales tax in respect of goods sold before the date of assent to the law making the alteration.

PART V.—APPLICATION OF SALES TAX ASSESSMENT ACT (No. 1) 1930.

Application of provisions of *Sales Tax Assessment Act (No. 1) 1930.*

Sub-section (1.) amended by No. 78, 1936, s. 45.

12.—(1.) The following Parts, sections and sub-sections of the *Sales Tax Assessment Act* (*No.* 1) 1930-1936, namely, section three, Parts II. and III., sub-sections (4.), (5B.) and (5C.) of section eighteen, section twenty-three, sections twenty-seven to thirty-nine inclusive, and Parts VII., VIII., IX. and X., and the Second Schedule shall *mutatis mutandis* apply in relation to the imposition, assessment and collection of the tax chargeable under this Act in like manner as they apply in relation to the imposition, assessment and collection of the tax chargeable under that Act, but for the purposes of this Act—

(*a*) sub-section (4.) of section eighteen of the *Sales Tax Assessment Act* (*No.* 1) 1930-1936 shall be read as if the words "sub-section (1.) of section four of this Act" were substituted for the words "sub-section (1.) of this section";

(*b*) section twenty-nine of the *Sales Tax Assessment Act* (*No.* 1) 1930-1936 shall be read as if the words "section nine or ten of this Act" were substituted for the words "section twenty-four or twenty-five of this Act" (wherever occurring); and

(*c*) sub-section (2.) of section thirty-five of the *Sales Tax Assessment Act* (*No.* 1) 1930-1936 shall be read as if the words "Part III. of this Act" were substituted for the words "Part V. of this Act",

SALES TAX ASSESSMENT ACT (No. 8) 1930-1936.*

An Act relating to the Imposition, Assessment and Collection of a Tax upon the Sale Value of Certain Goods imported into Australia, purchased by a Taxpayer, and applied to his own use, and for other purposes.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Sales Tax Assessment Act (No. 8) 1930-1936.** Short title.

Short title amended: No. 32, 1918, s. 2.

2. This Act is divided into Parts, as follows:— Parts.

Part I.—Preliminary.
Part II.—Liability to Taxation.
Part III.—Returns.
Part IV.—Collection and Recovery of Tax.
Part V.—Application of *Sales Tax Assessment Act (No. 1) 1930.*

PART II.—LIABILITY TO TAXATION.

3. Subject to, and in accordance with, the provisions of this Act, the sales tax imposed by the *Sales Tax Act (No. 8) 1930* shall be levied and paid upon the sale value of goods which have been, either before or after the commencement of this Act, imported into Sales tax.

Amended by No. 78, 1936, s. 3.

* The *Sales Tax Assessment Act (No. 8) 1930-1936* comprises the *Sales Tax Assessment Act (No. 8) 1930* as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table:—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
Sales Tax Assessment Act (No. 8) 1930	1930, No. 39	18th August, 1930 ..	18th August, 1930
Sales Tax Assessment Act (No. 8A) 1930	1930, No. 70	16th December, 1930..	18th August, 1930
Sales Tax Assessment Act (No. 8) 1931	1931, No. 39	10th August, 1931 ..	10th August, 1931
Sales Tax Assessment Act (No. 8) 1932	1932, No. 46	5th October, 1932 ..	5th October, 1932
Financial Relief Act 1932 ..	1932, No. 64	5th December, 1932 ..	5th December, 1932
Financial Relief Act 1933 ..	1933, No. 17	26th October, 1933 ..	26th October, 1933
Sales Tax Assessment (New Zealand Imports) Act 1933	1933, No. 25	24th November, 1933	1st December, 1933
Sales Tax Assessment Act (No. 8) 1933	1933, No. 54	12th December, 1933..	12th December, 1933
Financial Relief Act 1934 ..	1934, No. 16	1st August, 1934 ..	1st August, 1934
Sales Tax Assessment (Fiji Imports) Act 1934	1934, No. 62	17th December, 1934	17th January, 1935
Sales Tax (Financial Relief) Act 1935	1935, No. 45	25th October, 1935 ..	25th October, 1935
Sales Tax (Securities and Exemptions) Act 1935	1935, No. 61	7th December, 1935 ...	7th December, 1935
Sales Tax Amendment Act 1936	1936, No. 78	7th December, 1936 ..	7th December, 1936

Australia and sold to a taxpayer who has, on or after the first day of August One thousand nine hundred and thirty, applied those goods to his own use.

Sale value of goods. Amended by No. 48, 1932, s. 2.

4.* For the purposes of this Act, the sale value of goods purchased by a registered person who has quoted his certificate in respect of those goods, and has applied the goods to his own use shall be the amount for which the goods were so purchased.

Liability for tax.

5. Sales tax shall be paid by the registered person specified in the last preceding section.

Exemptions. Substituted by No. 61, 1935, s. 11.

6†. Notwithstanding anything contained in section five of this Act, sales tax shall not be payable under this Act by the person specified in that section upon the sale value of goods the sale value of which is, by virtue of the *Sales Tax Exemptions Act* 1935, exempt from sales tax under this Act.

Part III.—Returns.

Returns, &c.

7. Every person who during any month applies to his own use any goods purchased by him in respect of the purchase of which he has quoted his certificate shall, within twenty-one days after the close of that month, furnish to the Commissioner a return in the prescribed form setting forth full particulars of the goods so applied and such other information as is prescribed.

Further returns.

8. In addition to any return that may have been required under the last preceding section, the Commissioner may by notice in writing call upon any person to furnish to him, within the time specified in the notice, such return or such further or fuller return as the Commissioner requires, whether in that person's own behalf or as an agent or a trustee.

Part IV.—Collection and Recovery of Tax.

Time of payment of tax. Amended by No. 78, 1936, s. 47.

9. Every person liable to pay tax under section five of this Act upon the sale value of any goods applied by him to his own use during any month shall, within twenty-one days after the close of that month, pay sales tax on that sale value.

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* This section was amended by section 2 of the *Sales Tax Assessment Act (No. 8) 1932*. Section 4 of the *Sales Tax Assessment Act (No. 8) 1933* reads—

"4. Notwithstanding anything contained in section two of the *Sales Tax Assessment Act (No. 8) 1932*, the provisions of section four of the *Sales Tax Assessment Act (No. 8) 1930–1931*, as in force immediately prior to the commencement of the *Sales Tax Assessment Act (No. 8) 1932*, shall continue, and be deemed to have at all times continued, in force for all purposes in connexion with liability to sales tax in respect of goods applied by a person to his own use prior to such commencement.".

† This section was substituted by section 11 of the *Sales Tax (Securities and Exemptions) Act 1935*. Section 18 of that Act affects the operation of that amendment and is set out in the footnote on p. 19 of this reprint.

PART V.—APPLICATION OF SALES TAX ASSESSMENT ACT (No. 1) 1930.

Application of provisions of *Sales Tax Assessment Act (No. 1) 1930.*

Sub-section (1.) amended by No. 78, 1936, s. 49.

12.—(1.) The following Parts, sections and sub-sections of the *Sales Tax Assessment Act (No. 1) 1930-1936*, namely, section three, Parts II. and III., sub-sections (5B.) and (5C.) of section eighteen, section twenty-three, sections twenty-seven to thirty-nine inclusive, and Parts VII., VIII., IX. and X., and the Second Schedule, shall *mutatis mutandis* apply in relation to the imposition, assessment and collection of the tax chargeable under this Act in like manner as they apply in relation to the imposition, assessment and collection of the tax chargeable under that Act, but, for the purpose of this Act, section twenty-nine of the *Sales Tax Assessment Act (No. 1) 1930* shall be read as if the words "section nine or ten of this Act" were substituted for the words "section twenty-four or twenty-five of this Act" (wherever occurring), and sub-section (2.) of section thirty-five of that Act shall be read as if the words "Part III. of this Act" were substituted for the words "Part V. of this Act".

(2.) The power to make regulations, conferred by the application, by the last preceding sub-section, of section seventy-three of Part X. of the *Sales Tax Assessment Act (No. 1) 1930*, shall include the power to make regulations for enabling registrations, certificates and securities made, issued or given for the purposes of that Act, to be treated as, or to be deemed to be, made, issued or given for the purposes also of this Act, and shall include the power generally to make regulations for treating acts, matters and things done, for the purposes of the *Sales Tax Assessment Act (No. 1) 1930*, under the sections and Parts of that Act made applicable to this Act, as done or deemed to be done under this Act.

* * * * * * * * *

Schedule repealed by No. 61, 1935, s. 17.*

* The Schedule, which exempted certain goods from sales tax, was repealed by section 17 of the *Sales Tax (Securities and Exemptions) Act* 1935. Section 18 of that Act affects the operation of that repeal and is set out in the footnote on p. 19 of this reprint.

For the goods which are now exempt from sales tax see the *Sales Tax (Exemptions and Classifications) Act* 1935–1952.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 73B
C. A. No. 59-C-1849

THE COMMONWEALTH OF AUSTRALIA.

SALES TAX ACT (No. 1) 1930-1950.

SALES TAX ACT (No. 2) 1930-1950.

SALES TAX ACT (No. 3) 1930-1950.

SALES TAX ACT (No. 4) 1930-1950.

SALES TAX ACT (No. 5) 1930-1950.

SALES TAX ACT (No. 6) 1930-1950.

SALES TAX ACT (No. 7) 1930-1950.

SALES TAX ACT (No. 8) 1930-1950.

SALES TAX ACT (No. 9) 1930-1950.

SALES TAX ACT (No. 5) 1930-1950.*

An Act to impose a Tax upon the Sale Value of Goods imported into Australia.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Sales Tax Act* (*No.* 5) 1930-1950.* Short title. Amended by No. 22, 1948, s. 2.

2. The *Sales Tax Assessment Act* (*No.* 5) 1930-1931 shall be incorporated and read as one with this Act. Incorporation. Amended by No. 34, 1931, s. 3.

3.† Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia on or after the thirteenth day of October, One thousand nine hundred and fifty, by a taxpayer. Imposition of tax. Substituted by No. 42, 1950, s. 3.

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* The *Sales Tax Act* (*No.* 5) 1930–1950 comprises the *Sales Tax Act* (*No.* 5) 1930, as amended. Particulars of the Principal Act and of the amending Acts are set out in the following Table :—

Short Title of Act.	Number of Act.	Date of Assent.	Date of Commencement.
Sales Tax Act (*No.* 5) 1930	No. 34, 1930	18th August, 1930	18th August, 1930
Sales Tax Act (*No.* 5) 1931	No. 34, 1931	10th August, 1931	11th July, 1931
Sales Tax Act (*No.* 5) 1936	No. 36, 1936	29th September, 1936	29th September, 1936
Sales Tax Act (*No.* 5) 1938	No. 34, 1938	3rd October, 1938	3rd October, 1938
Sales Tax Act (*No.* 5) 1939	No. 20, 1939	15th September, 1939	15th September, 1939
Sales Tax Act (*No.* 5) 1940	No. 7, 1940	20th May, 1940	20th May, 1940
Sales Tax Act (*No.* 5A) 1940	No. 81, 1940	16th December, 1940	22nd November, 1940
Sales Tax Act (*No.* 5) 1941	No. 37, 1941	25th November, 1941	25th November, 1941
Sales Tax Act (*No.* 5) 1942	No. 11, 1942	18th May, 1942	18th May, 1942
Sales Tax Act (*No.* 5) 1943	No. 49, 1943	19th October, 1943	21st July, 1943
Sales Tax Act (*No.* 5) 1946	No. 62, 1946	11th December, 1946	15th November, 1946
Sales Tax Act (*No.* 5) 1949	No. 59, 1949	28th October, 1949	8th September, 1949
Sales Tax Act (*No.* 5) 1950	No. 42, 1950	14th December, 1950	13th October, 1950

† Section four of the *Sales Tax Act* (*No.* 5) 1950, which Act repealed section three of the *Sales Tax Act* (*No.* 5) 1930–1949, reads as follows :—

"4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia before the date of commencement of this Act by a taxpayer shall continue to be imposed as if those provisions had not been repealed."

Rates of tax. Added by No. 42, 1950, s. 3.

4. The rates of the sales tax are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1950—10 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1950—25 per centum;

(*c*) in respect of goods covered by the Fourth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1950—33⅓ per centum; and

(*d*) in respect of goods not covered by the Second, Third or Fourth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1950 and on the sale value of which it is not provided by that Act that sales tax shall not be payable—8⅓ per centum.

SALES TAX ACT (No. 6) 1930-1950.*

An Act to impose a Tax upon the Sale Value of Goods imported into Australia and sold by the Importer, or applied to his own use.

Title amended by No. 48, 1932, s. 2.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Sales Tax Act* (*No.* 6) 1930-1950.*

Short title. Amended by No. 32, 1948, s. 2.

2. The *Sales Tax Assessment Act* (*No.* 6) 1930-1931 shall be incorporated and read as one with this Act.

Incorporation. Amended by No. 26, 1931, s. 3.

3.† Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia by a taxpayer and, on or after the thirteenth day of October, One thousand nine hundred and fifty, sold by him or applied by him to his own use.

Imposition of tax. Substituted by No. 42, 1950, s. 3.

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* The *Sales Tax Act* (*No.* 6) 1930–1950 comprises the *Sales Tax Act* (*No.* 6) 1930, as amended. Particulars of the Principal Act and of the amending Acts are set out in the following Table:—

Short Title of Act.	Number of Act.	Date of Assent.	Date of Commencement.
Sales Tax Act (*No.* 6) 1930 ..	No. 36, 1930	18th August, 1930 ..	18th August, 1930
Sales Tax Act (*No.* 6) 1931 ..	No. 26, 1931	10th August, 1931 ..	11th July, 1931
Sales Tax Act (*No.* 6) 1932 ..	No. 48, 1932	5th October, 1932 ..	5th October, 1932
Sales Tax Act (*No.* 6) 1936 ..	No. 37, 1936	29th September, 1936	29th September, 1936
Sales Tax Act (*No.* 6) 1938 ..	No. 35, 1938	3rd October, 1938 ..	3rd October, 1938
Sales Tax Act (*No.* 6) 1939 ..	No. 21, 1939	15th September, 1939	15th September, 1939
Sales Tax Act (*No.* 6) 1940 ..	No. 8, 1940	20th May, 1940 ..	20th May, 1940
Sales Tax Act (*No.* 6A) 1940 ..	No. 82, 1940	16th December, 1940	22nd November, 1940
Sales Tax Act (*No.* 6) 1941 ..	No. 28, 1941	25th November, 1941	25th November, 1941
Sales Tax Act (*No.* 6) 1942 ..	No. 12, 1942	18th May, 1942 ..	18th May, 1942
Sales Tax Act (*No.* 6) 1943 ..	No. 50, 1943	19th October, 1943 ..	21st July, 1943
Sales Tax Act (*No.* 6) 1946 ..	No. 63, 1946	11th December, 1946	15th November, 1946
Sales Tax Act (*No.* 6) 1949 ..	No. 60, 1949	28th October, 1949 ..	8th September, 1949
Sales Tax Act (*No.* 6) 1950 ..	No. 43, 1950	14th December, 1950	13th October, 1950

† Section four of the *Sales Tax Act* (*No.* 6) 1950, which Act repealed section three of the *Sales Tax Act* (*No.* 6) 1930–1949, reads as follows:—

"4. The sales tax imposed by the provisions repealed by this Act on the sale value of goods imported into Australia by a taxpayer and, before the date of commencement of this Act, sold by him or applied by him to his own use shall continue to be imposed as if those provisions had not been repealed."

Rates of tax.
Added by No. 43, 1950, s. 3.

4. The rates of the sales tax are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1950—10 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1950—25 per centum;

(*c*) in respect of goods covered by the Fourth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1950—33⅓ per centum; and

(*d*) in respect of goods not covered by the Second, Third or Fourth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1950 and on the sale value of which it is not provided by that Act that sales tax shall not be payable—8⅓ per centum.

SALES TAX ACT (No. 7) 1930-1950.*

An Act to impose a Tax upon the Sale Value of Goods imported into Australia and sold by a person other than the Importer.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Sales Tax Act (No. 7)* 1930-1950.* Short title. Amended by No. 32, 1948, s. 2.

2. The *Sales Tax Assessment Act (No. 7)* 1930-1931 shall be incorporated and read as one with this Act. Incorporation. Amended by No. 38, 1931, s. 3.

3.† Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia and, on or after the thirteenth day of October, One thousand nine hundred and fifty, sold by a taxpayer not being the importer of the goods. Imposition of tax. Substituted by No. 44, 1950, s. 3.

* The *Sales Tax Act (No. 7)* 1930-1950 comprises the *Sales Tax Act (No. 7)* 1930, as amended. Particulars of the Principal Act and of the amending Acts are set out in the following Table:—

Short Title of Act.	Number of Act.	Date of Assent.	Date of Commencement.
Sales Tax Act (No. 7) 1930 ..	No. 38, 1930	18th August, 1930 ..	18th August, 1930
Sales Tax Act (No. 7) 1931 ..	No. 38, 1931	10th August, 1931 ..	11th July, 1931
Sales Tax Act (No. 7) 1936 ..	No. 38, 1936	29th September, 1936	29th September, 1936
Sales Tax Act (No. 7) 1938 ..	No. 36, 1938	3rd October, 1938 ..	3rd October, 1938
Sales Tax Act (No. 7) 1939 ..	No. 22, 1939	15th September, 1939	15th September, 1939
Sales Tax Act (No. 7) 1940 ..	No. 9, 1940	20th May, 1940 ..	20th May, 1940
Sales Tax Act (No. 7A) 1940 ..	No. 83, 1940	16th December, 1940	22nd November, 1940
Sales Tax Act (No. 7) 1941 ..	No. 39, 1941	25th November, 1941	25th November, 1941
Sales Tax Act (No. 7) 1942 ..	No. 13, 1942	18th May, 1942 ..	18th May, 1942
Sales Tax Act (No. 7) 1943 ..	No. 51, 1943	19th October, 1943 ..	21st July, 1943
Sales Tax Act (No. 7) 1946 ..	No. 64, 1946	11th December, 1946	15th November, 1946
Sales Tax Act (No. 7) 1949 ..	No. 61, 1949	28th October, 1949 ..	8th September, 1949
Sales Tax Act (No. 7) 1950 ..	No. 44, 1950	14th December, 1950	13th October, 1950

† Section four of the *Sales Tax Act (No. 7)* 1950, which Act repealed section three of the *Sales Tax Act (No. 7)* 1930-1949, reads as follows:—

"4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia and, before the commencement of this Act, sold by a taxpayer not being the importer of the goods shall continue to be imposed as if those provisions had not been repealed."

Rates of tax. Added by No. 44, 1938, s. 3.

4. The rates of the sales tax are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935-1950—10 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935-1950—25 per centum;

(*c*) in respect of goods covered by the Fourth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935-1950—33⅓ per centum; and

(*d*) in respect of goods not covered by the Second, Third or Fourth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935-1950 and on the sale value of which it is not provided by that Act that sales tax shall not be payable—8⅓ per centum.

SALES TAX ACT (No. 8) 1930-1950.*

An Act to impose a Tax upon the Sale Value of certain Goods imported into Australia, purchased by a Taxpayer, and applied to his own use.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Sales Tax Act* (*No.* 8) 1930-1950.* Short title. Amended by No. 32, 1948, s. 2.

2. The *Sales Tax Assessment Act* (*No.* 8) 1930-1931 shall be incorporated and read as one with this Act. Incorporation. Amended by No. 40, 1931, s. 3.

3.† Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia and sold to a taxpayer who has, on or after the thirteenth day of October, One thousand nine hundred and fifty, applied those goods to his own use. Imposition of tax. Substituted by No. 45, 1950, s. 3.

* The *Sales Tax Act* (*No.* 8) 1930–1950 comprises the *Sales Tax Act* (*No.* 8) 1930, as amended. Particulars of the Principal Act and of the amending Acts are set out in the following Table:—

Short Title of Act.	Number of Act.	Date of Assent.	Date of Commencement.
Sales Tax Act (*No.* 8) 1930	No. 40, 1930	18th August, 1930	18th August, 1930
Sales Tax Act (*No.* 8) 1931	No. 40, 1931	10th August, 1931	11th July, 1931
Sales Tax Act (*No.* 8) 1936	No. 39, 1936	29th September, 1936	29th September, 1936
Sales Tax Act (*No.* 8) 1938	No. 37, 1938	3rd October, 1938	3rd October, 1938
Sales Tax Act (*No.* 8) 1939	No. 25, 1939	15th September, 1939	15th September, 1939
Sales Tax Act (*No.* 8) 1940	No. 10, 1940	20th May, 1940	20th May, 1940
Sales Tax Act (*No.* 8A) 1940	No. 84, 1940	16th December, 1940	22nd November, 1940
Sales Tax Act (*No.* 8) 1941	No. 40, 1941	25th November, 1941	25th November, 1941
Sales Tax Act (*No.* 8) 1942	No. 14, 1942	18th May, 1942	18th May, 1942
Sales Tax Act (*No.* 8) 1943	No. 52, 1943	19th October, 1943	21st July, 1943
Sales Tax Act (*No.* 8) 1946	No. 65, 1946	11th December, 1946	15th November, 1946
Sales Tax Act (*No.* 8) 1949	No. 62, 1949	28th October, 1949	8th September, 1949
Sales Tax Act (*No.* 8) 1950	No. 45, 1950	14th December, 1950	13th October, 1950

† Section four of the *Sales Tax Act* (*No.* 8) 1950, which Act repealed section three of the *Sales Tax Act* (*No.* 8) 1930–1949, reads as follows:—

"4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia and sold to a taxpayer who has, before the date of commencement of this Act, applied those goods to his own use shall continue to be imposed as if those provisions had not been repealed."

Rates of Tax. Added by No. 45, 1950, s. 3.

4. The rates of the sales tax are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1950—10 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1950—25 per centum;

(*c*) in respect of goods covered by the Fourth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1950—33⅓ per centum; and

(*d*) in respect of goods not covered by the Second, Third or Fourth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1950 and on the sale value of which it is not provided by that Act that sales tax shall not be payable—8⅓ per centum.

THE COMMONWEALTH OF AUSTRALIA.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 730
C. A. No. 59-C-1847
RJC

SALES TAX ACT (No. 1) 1930-1962.
SALES TAX ACT (No. 2) 1930-1962.
SALES TAX ACT (No. 3) 1930-1962.
SALES TAX ACT (No. 4) 1930-1962.
SALES TAX ACT (No. 5) 1930-1962.
SALES TAX ACT (No. 6) 1930-1962.
SALES TAX ACT (No. 7) 1930-1962.
SALES TAX ACT (No. 8) 1930-1962.
SALES TAX ACT (No. 9) 1930-1962.

747/63.—PRICE 1s.

SALES TAX ACT (No. 5) 1930-1962.*

An Act to impose a Tax upon the Sale Value of Goods imported into Australia.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Sales Tax Act* (*No.* 5) 1930-1962.* Short title. Short title amended: No. 32, 1918, s. 2.

2. The *Sales Tax Assessment Act* (*No.* 5) 1930-1931 shall be incorporated and read as one with this Act. Incorporation. Amended by No. 34, 1931, s. 3.

3.† Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia on or after the seventh day of February, One thousand nine hundred and sixty-two, by a taxpayer. Imposition of tax. Substituted by No. 9, 1962, s. 3.

* The *Sales Tax Act* (*No.* 5) 1930–1962 comprises the *Sales Tax Act* (*No.* 5) 1930, as amended. Particulars of the Principal Act and of the amending Acts are set out in the following Table:—

Short Title of Act.	Number of Act.	Date of Assent.	Date of Commencement.
Sales Tax Act (*No.* 5) 1930 ..	No. 34, 1930	18th August, 1930 ..	18th August, 1930
Sales Tax Act (*No.* 5) 1931 ..	No. 34, 1931	10th August, 1931 ..	11th July, 1931
Sales Tax Act (*No.* 5) 1936 ..	No. 36, 1936	29th September, 1936	29th September, 1936
Sales Tax Act (*No.* 5) 1938 ..	No. 34, 1938	3rd October, 1938 ..	3rd October, 1938
Sales Tax Act (*No.* 5) 1939 ..	No. 20, 1939	15th September, 1939	15th September, 1939
Sales Tax Act (*No.* 5) 1940 ..	No. 7, 1940	20th May, 1940 ..	20th May, 1940
Sales Tax Act (*No.* 5A) 1940 ..	No. 81, 1940	16th December, 1940	22nd November, 1940
Sales Tax Act (*No.* 5) 1941 ..	No. 37, 1941	25th November, 1941	25th November, 1941
Sales Tax Act (*No.* 5) 1942 ..	No. 11, 1942	18th May, 1942 ..	18th May, 1942
Sales Tax Act (*No.* 5) 1943 ..	No. 49, 1943	19th October, 1943	21st July, 1943
Sales Tax Act (*No.* 5) 1946 ..	No. 62, 1946	11th December, 1946	15th November, 1946
Sales Tax Act (*No.* 5) 1949 ..	No. 59, 1949	28th October, 1949 ..	8th September, 1949
Sales Tax Act (*No.* 5) 1950 ..	No. 42, 1950	14th December, 1950	13th October, 1950
Sales Tax Act (*No.* 5) 1951 ..	No. 68, 1951	11th December, 1951	27th September, 1951
Sales Tax Act (*No.* 5) 1952 ..	No. 49, 1952	30th September, 1952	7th August, 1952
Sales Tax Act (*No.* 5) 1953 ..	No. 58, 1953	28th October, 1953	10th September, 1953
Sales Tax Act (*No.* 5) 1954 ..	No. 50, 1954	6th November, 1954	19th August, 1954
Sales Tax Act (*No.* 5) 1956 ..	No. 10, 1956	12th May, 1956 ..	15th March, 1956
Sales Tax Act (*No.* 5) 1957 ..	No. 76, 1957	12th December, 1957	4th September, 1957
Sales Tax Act (*No.* 5) 1960 ..	No. 93, 1960	14th December, 1960	16th November, 1960
Sales Tax Act (*No.* 5) 1961 ..	No. 6, 1961	4th May, 1961 ..	22nd February, 1961
Sales Tax Act (*No.* 5A) 1961 ..	No. 81, 1961	27th October, 1961	16th August, 1961
Sales Tax Act (*No.* 5) 1962 ..	No. 9, 1962	23rd March, 1962 ..	7th February, 1962

† Section 4 of the *Sales Tax Act* (*No.* 5) 1962, by which this section was repealed and substituted, reads as follows:—

"4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia by a taxpayer on or after the sixteenth day of August, One thousand nine hundred and sixty-one, and before the date of commencement of this Act, continues to be imposed as if those provisions had not been repealed."

Rates of tax. Substituted by No. 9, 1962, s. 3.

4. The rates of the sales tax imposed by this Act are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1962—25 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1962—2½ per centum;

(*c*) in respect of goods covered by the Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1962—22½ per centum; and

(*d*) in respect of goods not covered by the Second, Third or Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1962 and on the sale value of which it is not provided by that Act that the sales tax imposed by this Act shall not be payable—12½ per centum.

SALES TAX ACT (No. 6) 1930-1962.*

An Act to impose a Tax upon the Sale Value of Goods imported into Australia and sold by the Importer, or applied to his own use.

Title amended by No. 48, 1932, s. 2.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title.

1. This Act may be cited as the *Sales Tax Act* (*No.* 6) 1930-1962.*

Short title amended; No. 32, 1918, s. 2.

Incorporation.

2. The *Sales Tax Assessment Act* (*No.* 6) 1930-1931 shall be incorporated and read as one with this Act.

Amended by No. 36, 1931, s. 3.

Imposition of tax.

3.† Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia by a taxpayer and, on or after the seventh day of February, One thousand nine hundred and sixty-two, sold by him or applied by him to his own use.

Substituted by No. 10, 1962, s. 3.

* The *Sales Tax Act* (*No.* 6) 1930–1962 comprises the *Sales Tax Act* (*No.* 6) 1930, as amended. Particulars of the Principal Act and of the amending Acts are set out in the following Table:—

Short Title of Act.	Number of Act.	Date of Assent.	Date of Commencement.
Sales Tax Act (*No.* 6) 1930 ..	No. 36, 1930	18th August, 1930 ..	18th August, 1930
Sales Tax Act (*No.* 6) 1931 ..	No. 36, 1931	10th August, 1931 ..	11th July, 1931
Sales Tax Act (*No.* 6) 1932 ..	No. 48, 1932	5th October, 1932 ..	5th October, 1932
Sales Tax Act (*No.* 6) 1936 ..	No. 37, 1936	29th September, 1936	29th September, 1936
Sales Tax Act (*No.* 6) 1938 ..	No. 35, 1938	3rd October, 1938 ..	3rd October, 1938
Sales Tax Act (*No.* 6) 1939 ..	No. 21, 1939	15th September, 1939	15th September, 1939
Sales Tax Act (*No.* 6) 1940 ..	No. 8, 1940	20th May, 1940 ..	20th May, 1940
Sales Tax Act (*No.* 6A) 1940 ..	No. 82, 1940	16th December, 1940	22nd November, 1940
Sales Tax Act (*No.* 6) 1941 ..	No. 38, 1941	25th November, 1941	25th November, 1941
Sales Tax Act (*No.* 6) 1942 ..	No. 12, 1942	18th May, 1942 ..	18th May, 1942
Sales Tax Act (*No.* 6) 1943 ..	No. 50, 1943	19th October, 1943 ..	21st July, 1943
Sales Tax Act (*No.* 6) 1946 ..	No. 63, 1946	11th December, 1946	15th November, 1946
Sales Tax Act (*No.* 6) 1949 ..	No. 60, 1949	28th October, 1949 ..	8th September, 1949
Sales Tax Act (*No.* 6) 1950 ..	No. 43, 1950	14th December, 1950	13th October, 1950
Sales Tax Act (*No.* 6) 1951 ..	No. 69, 1951	11th December, 1951	27th September, 1951
Sales Tax Act (*No.* 6) 1952 ..	No. 50, 1952	30th September, 1952	7th August, 1952
Sales Tax Act (*No.* 6) 1953 ..	No. 59, 1953	28th October, 1953 ..	10th September, 1953
Sales Tax Act (*No.* 6) 1954 ..	No. 51, 1954	6th November, 1954	19th August, 1954
Sales Tax Act (*No.* 6) 1956 ..	No. 11, 1956	12th May, 1956 ..	15th March, 1956
Sales Tax Act (*No.* 6) 1957 ..	No. 77, 1957	12th December, 1957	4th September, 1957
Sales Tax Act (*No.* 6) 1960 ..	No. 94, 1960	14th December, 1960	16th November, 1960
Sales Tax Act (*No.* 6) 1961 ..	No. 7, 1961	4th May, 1961 ..	22nd February, 1961
Sales Tax Act (*No.* 6A) 1961 ..	No. 82, 1961	27th October, 1961 ..	16th August, 1961
Sales Tax Act (*No.* 6) 1962 ..	No. 10, 1962	23rd March, 1962 ..	7th February, 1962

† Section 4 of the *Sales Tax Act* (*No.* 6) 1962, by which this section was repealed and substituted, reads as follows:—

"4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia by a taxpayer and, on or after the sixteenth day of August, One thousand nine hundred and sixty-one, and before the date of commencement of this Act, sold by him or applied by him to his own use continues to be imposed as if those provisions had not been repealed."

Rates of tax. Substituted by No. 10, 1962, s. 3.

4. The rates of the sales tax imposed by this Act are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935-1962—25 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935-1962—2½ per centum;

(*c*) in respect of goods covered by the Fifth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935-1962—22½ per centum; and

(*d*) in respect of goods not covered by the Second, Third or Fifth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935-1962 and on the sale value of which it is not provided by that Act that the sales tax imposed by this Act shall not be payable—12½ per centum.

SALES TAX ACT (No. 7) 1930-1962.*

An Act to impose a Tax upon the Sale Value of Goods imported into Australia and sold by a person other than the Importer.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title.

Short title amended: No. 32, 1918, s. 2.

1. This Act may be cited as the *Sales Tax Act* (*No.* 7) 1930-1962.*

Incorporation.

Amended by No. 38, 1931, s. 3.

2. The *Sales Tax Assessment Act* (*No.* 7) 1930-1931 shall be incorporated and read as one with this Act.

Imposition of tax.

Substituted by No. 11, 1962, s. 3.

3.† Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia and, on or after the seventh day of February, One thousand nine hundred and sixty-two, sold by a taxpayer not being the importer of the goods.

* The *Sales Tax Act* (*No.* 7) 1930–1962 comprises the *Sales Tax Act* (*No.* 7) 1930, as amended. Particulars of the Principal Act and of the amending Acts are set out in the following Table:—

Short Title of Act.	Number of Act	Date of Assent.	Date of Commencement.
Sales Tax Act (*No.* 7) 1930 ..	No. 38, 1930	18th August, 1930 ..	18th August, 1930
Sales Tax Act (*No.* 7) 1931 ..	No. 38, 1931	10th August, 1931 ..	11th July, 1931
Sales Tax Act (*No.* 7) 1936 ..	No. 38, 1936	29th September, 1936	29th September, 1936
Sales Tax Act (*No.* 7) 1938 ..	No. 36, 1938	3rd October, 1938 ..	3rd October, 1938
Sales Tax Act (*No.* 7) 1939 ..	No. 22, 1939	15th September, 1939	15th September, 1939
Sales Tax Act (*No.* 7) 1940 ..	No. 9, 1940	20th May, 1940 ..	20th May, 1940
Sales Tax Act (*No.* 7A) 1940 ..	No. 83, 1940	16th December, 1940	22nd November, 1940
Sales Tax Act (*No.* 7) 1941 ..	No. 39, 1941	25th November, 1941	25th November, 1941
Sales Tax Act (*No.* 7) 1942 ..	No. 13, 1942	18th May, 1942 ..	18th May, 1942
Sales Tax Act (*No.* 7) 1943 ..	No. 51, 1943	19th October, 1943 ..	21st July, 1943
Sales Tax Act (*No.* 7) 1946 ..	No. 64, 1946	11th December, 1946	15th November, 1946
Sales Tax Act (*No.* 7) 1949 ..	No. 61, 1949	28th October, 1949 ..	8th September, 1949
Sales Tax Act (*No.* 7) 1950 ..	No. 44, 1950	14th December, 1950	13th October, 1950
Sales Tax Act (*No.* 7) 1951 ..	No. 70, 1951	11th December, 1951	27th September, 1951
Sales Tax Act (*No.* 7) 1952 ..	No. 51, 1952	30th September, 1952	7th August, 1952
Sales Tax Act (*No.* 7) 1953 ..	No. 60, 1953	28th October, 1953 ..	10th September, 1953
Sales Tax Act (*No.* 7) 1954 ..	No. 52, 1954	6th November, 1954	19th August, 1954
Sales Tax Act (*No.* 7) 1956 ..	No. 12, 1956	12th May, 1956 ..	15th March, 1956
Sales Tax Act (*No.* 7) 1957 ..	No. 78, 1957	12th December, 1957	4th September, 1957
Sales Tax Act (*No.* 7) 1960 ..	No. 95, 1960	14th December, 1960	16th November, 1960
Sales Tax Act (*No.* 7) 1961 ..	No. 8, 1961	4th May, 1961 ..	22nd February, 1961
Sales Tax Act (*No.* 7A) 1961 ..	No. 83, 1961	27th October, 1961 ..	16th August, 1961
Sales Tax Act (*No.* 7) 1962 ..	No. 11, 1962	23rd March, 1962 ..	7th February, 1962

† Section 4 of the *Sales Tax Act* (*No.* 7) 1962, by which this section was repealed and substituted, reads as follows:—

"4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia and, on or after the sixteenth day of August, One thousand nine hundred and sixty-one, and before the date of commencement of this Act, sold by a taxpayer, not being the importer of the goods, continues to be imposed as if those provisions had not been repealed."

Rates of tax. Substituted by No. 11, 1962, s. 3.

4. The rates of the sales tax imposed by this Act are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1962—25 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1962—2½ per centum;

(*c*) in respect of goods covered by the Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1962—22½ per centum; and

(*d*) in respect of goods not covered by the Second Third or Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1962 and on the sale value of which it is not provided by that Act that the sales tax imposed by this Act shall not be payable—12½ per centum.

SALES TAX ACT (No. 8) 1930-1962.*

An Act to impose a Tax upon the Sale Value of certain Goods imported into Australia, purchased by a Taxpayer, and applied to his own use.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title.

1. This Act may be cited as the *Sales Tax Act* (*No.* 8) 1930-1962.*

Short title amended: No. 32, 1918, s. 2.

Incorporation.

2. The *Sales Tax Assessment Act* (*No.* 8) 1930-1931 shall be incorporated and read as one with this Act.

Amended by No. 48, 1931, s. 3.

Imposition of tax.

Substituted by No. 12, 1962, s. 3.

3.† Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia and sold to a taxpayer who has, on or after the seventh day of February, One thousand nine hundred and sixty-two, applied those goods to his own use.

* The *Sales Tax Act* (*No.* 8) 1930–1962 comprises the *Sales Tax Act* (*No.* 8) 1930, as amended. Particulars of the Principal Act and of the amending Acts are set out in the following Table:—

Short Title of Act.	Number of Act.	Date of Assent.	Date of Commencement.
Sales Tax Act (*No.* 8) 1930 ..	No. 40, 1930	18th August, 1930 ..	18th August, 1930
Sales Tax Act (*No.* 8) 1931 ..	No. 40, 1931	10th August, 1931 ..	11th July, 1931
Sales Tax Act (*No.* 8) 1936 ..	No. 39, 1936	29th September, 1936	29th September, 1936
Sales Tax Act (*No.* 8) 1938 ..	No. 37, 1938	3rd October, 1938 ..	3rd October, 1938
Sales Tax Act (*No.* 8) 1939 ..	No. 23, 1939	15th September, 1939	15th September, 1939
Sales Tax Act (*No.* 8) 1940 ..	No. 10, 1940	20th May, 1940 ..	20th May, 1940
Sales Tax Act (*No.* 8A) 1940 ..	No. 84, 1940	16th December, 1940	22nd November, 1940
Sales Tax Act (*No.* 8) 1941 ..	No. 40, 1941	25th November, 1941	25th November, 1941
Sales Tax Act (*No.* 8) 1942 ..	No. 14, 1942	18th May, 1942 ..	18th May, 1942
Sales Tax Act (*No.* 8) 1943 ..	No. 52, 1943	19th October, 1943 ..	21st July, 1943
Sales Tax Act (*No.* 8) 1946 ..	No. 65, 1946	11th December, 1946	15th November, 1946
Sales Tax Act (*No.* 8) 1949 ..	No. 62, 1949	28th October 1949 ..	8th September, 1949
Sales Tax Act (*No.* 8) 1950 ..	No. 45, 1950	14th December, 1950	13th October, 1950
Sales Tax Act (*No.* 8) 1951 ..	No. 71, 1951	11th December, 1951	27th September, 1951
Sales Tax Act (*No.* 8) 1952 ..	No. 52, 1952	30th September, 1952	7th August, 1952
Sales Tax Act (*No.* 8) 1953 ..	No. 61, 1953	28th October, 1953 ..	10th September, 1953
Sales Tax Act (*No.* 8) 1954 ..	No. 53, 1954	6th November, 1954	19th August, 1954
Sales Tax Act (*No.* 8) 1956 ..	No. 13, 1956	12th May, 1956 ..	15th March, 1956
Sales Tax Act (*No.* 8) 1957 ..	No. 79, 1957	12th December, 1957	4th September, 1957
Sales Tax Act (*No.* 8) 1960 ..	No. 96, 1960	14th December, 1960	16th November, 1960
Sales Tax Act (*No.* 8) 1961 ..	No. 9, 1961	4th May, 1961 ..	22nd February, 1961
Sales Tax Act (*No.* 8A) 1961	No. 84, 1961	27th October, 1961 ..	16th August, 1961
Sales Tax Act (*No.* 8) 1962	No. 12, 1962	23rd March, 1962 ..	7th February, 1962

† Section 4 of the *Sales Tax Act* (*No.* 8) 1962, by which this section was repealed and substituted, reads as follows:—

"4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia and sold to a taxpayer who has, on or after the sixteenth day of August, One thousand nine hundred and sixty-one, and before the date of commencement of this Act, applied those goods to his own use continues to be imposed as if those provisions had not been repealed."

Rates of tax. Substituted by No. 12, 1962, s. 3.

4. The rates of the sales tax imposed by this Act are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1962—25 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1962—2½ per centum;

(*c*) in respect of goods covered by the Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1962—22½ per centum; and

(*d*) in respect of goods not covered by the Second, Third or Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1962 and on the sale value of which it is not provided by that Act that the sales tax imposed by this Act shall not be payable—12½ per centum.

THE COMMONWEALTH OF AUSTRALIA.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 74 A
C. A. No. 59-C-1847

SALES TAX (EXEMPTIONS AND CLASSIFICATIONS).

No. 5 of 1956.

An Act to amend the *Sales Tax (Exemptions and Classifications) Act* 1935-1954.

[Assented to 12th May, 1956.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title and citation.

1.—(1.) This Act may be cited as the *Sales Tax (Exemptions and Classifications) Act* 1956.

(2.) The *Sales Tax (Exemptions and Classifications) Act* 1935–1954* is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Sales Tax (Exemptions and Classifications) Act* 1935–1956.

Commencement.

2. This Act shall be deemed to have come into operation on the fifteenth day of March, One thousand nine hundred and fifty-six.

3. Section

* Act No. 60, 1935, as amended by No. 41, 1936; No. 78, 1938; No. 32, 1939; Nos. 29 and 70, 1940; No. 32, 1941; No. 6, 1942; Nos. 35 and 44, 1943; No. 31, 1944; No. 36, 1945; Nos. 12 and 67, 1946; No. 65, 1947; No. 42, 1948; No. 54, 1949; No. 37, 1950; No. 42, 1951; No. 44, 1952; No. 58, 1953; and No. 45, 1954.

F.2905/56.—PRICE 3D.

Classification of goods.

3. Section six B of the Principal Act is amended by omitting from sub-section (1.) the words "the Second or Third Schedule to this Act" and inserting in their stead the words "a Schedule to this Act other than the First Schedule".

Second Schedule.

4. The Second Schedule to the Principal Act is amended—

(*a*) by omitting item 43; and

(*b*) by omitting item 48 and inserting in its stead the following item:—

"48	Wireless receiving sets; television receiving sets; record players and pick-ups; combined wireless receiving sets and gramophones; combined television receiving sets and gramophones; combined wireless receiving sets and television receiving sets; combined wireless receiving sets, television receiving sets and gramophones".

Fourth and Fifth Schedules.

5. After the Third Schedule to the Principal Act the following Schedules are added:—

FOURTH SCHEDULE. Section 6B.

Item No.	Specification of Goods.
1	Motor vehicles of a kind used for commercial purposes (not being goods covered by item 1 in the Fifth Schedule to this Act), including prime movers and semi-trailers for attachment to prime movers
2	Motor cycles, auto-cycles and motor scooters, and side cars and side boxes for attachment to those goods
3	Parts and accessories (other than tyres and tubes) for goods covered by any item in this Schedule or by item 1 in the Fifth Schedule to this Act

FIFTH SCHEDULE. Section 6B.

Item No.	Specification of Goods.
1	Motor cars designed primarily and principally for the transport of persons, including sedans, coupés, tourers, roadsters, racing cars, taxi-cabs, station waggons, estate cars, and vehicles similar in design to station waggons or estate cars, but not including panel vans, delivery vans, utilities, ambulances, hearses, jeeps, trucks, lorries or motor buses

By Authority: A. J. Arthur, Commonwealth Government Printer, Canberra.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 746 and
C. A. No.
59-C-1847

THE COMMONWEALTH OF AUSTRALIA.

SALES TAX (No. 5).

No. 76 of 1957.

An Act to amend the *Sales Tax Act* (*No.* 5) 1930-1956.

[Assented to 12th December, 1957.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1.—(1.) This Act may be cited as the *Sales Tax Act* (*No.* 5) 1957. Short title and citation.

(2.) The *Sales Tax Act* (*No.* 5) 1930–1956,* as amended by this Act, may be cited as the *Sales Tax Act* (*No.* 5) 1930–1957.

2. This Act shall be deemed to have come into operation on the fourth day of September, One thousand nine hundred and fifty-seven. Commencement.

3. Sections three and four of the *Sales Tax Act* (*No.* 5) 1930–1956 are repealed and the following sections inserted in their stead:—

"3. Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia on or after the fourth day of September, One thousand nine hundred and fifty-seven, by a taxpayer. Imposition of tax.

"4. The

* Act No. 34, 1930, as amended by No. 34, 1931; No. 36, 1936; No. 34, 1938; No. 20, 1939; Nos. 7 and 81, 1940; No. 37, 1941; No. 11, 1942; No. 49, 1943; No. 62, 1946; No. 59, 1949; No. 42, 1950; No. 68, 1951; No. 49, 1952; No. 58, 1953; No. 50, 1954; and No. 10, 1956.

F.7450/57.—PRICE 3D.

Rates of tax.

"4. The rates of the sales tax imposed by this Act are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1957—25 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1957—8⅓ per centum;

(*c*) in respect of goods covered by the Fourth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1957—16⅔ per centum;

(*d*) in respect of goods covered by the Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1957—30 per centum; and

(*e*) in respect of goods not covered by the Second, Third, Fourth or Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1957 and on the sale value of which it is not provided by that Act that the sales tax imposed by this Act shall not be payable—12½ per centum.".

Saving.

4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia by a taxpayer on or after the fifteenth day of March, One thousand nine hundred and fifty-six, and before the date of commencement of this Act continues to be imposed as if those provisions had not been repealed.

By Authority: A. J. Arthur, Commonwealth Government Printer, Canberra.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 74C
C. A. No. 59-C-1847

THE COMMONWEALTH OF AUSTRALIA.

SALES TAX (No. 5).

No. 93 of 1960.

An Act to amend the *Sales Tax Act* (*No.* 5) 1930-1957.

[Assented to 14th December, 1960.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1.—(1.) This Act may be cited as the *Sales Tax Act* (*No.* 5) 1960. **Short title and citation.**

(2.) The *Sales Tax Act* (*No.* 5) 1930–1957,* as amended by this Act, may be cited as the *Sales Tax Act* (*No.* 5) 1930–1960.

2. This Act shall be deemed to have come into operation on the sixteenth day of November, One thousand nine hundred and sixty. **Commencement.**

3. Sections three and four of the *Sales Tax Act* (*No.* 5) 1930–1957 are repealed and the following sections inserted in their stead:—

"3. Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia on or after the sixteenth day of November, One thousand nine hundred and sixty, by a taxpayer. **Imposition of tax.**

"4. The

* Act No. 34, 1930, as amended by No. 34, 1931; No. 36, 1936; No. 34, 1938; No. 20, 1939; Nos. 7 and 81, 1940; No. 37, 1941; No. 11, 1942; No. 49, 1943; No. 62, 1946; No. 59, 1949; No. 42, 1950; No. 68, 1951; No. 49, 1952; No. 58, 1953; No. 50, 1954; No. 10, 1956; and No. 76, 1957.

F 10458/60.—PRICE 3D.

Rates of tax.

"4. The rates of the sales tax imposed by this Act are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1960—25 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1960—8⅓ per centum;

(*c*) in respect of goods covered by the Fourth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1960—16⅔ per centum;

(*d*) in respect of goods covered by the Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1960—40 per centum; and

(*e*) in respect of goods not covered by the Second, Third, Fourth or Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1960 and on the sale value of which it is not provided by that Act that the sales tax imposed by this Act shall not be payable—12½ per centum.".

Saving.

4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia by a taxpayer on or after the fourth day of September, One thousand nine hundred and fifty-seven, and before the date of commencement of this Act continues to be imposed as if those provisions had not been repealed.

By Authority: A. J. Arthur, Commonwealth Government Printer, Canberra.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 74D
C. A. No. 59-C-1847

THE COMMONWEALTH OF AUSTRALIA.

SALES TAX (No. 5).

No. 6 of 1961.

An Act to amend the *Sales Tax Act* (*No.* 5) 1930-1960.

[Assented to 4th May, 1961.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1.—(1.) This Act may be cited as the *Sales Tax Act* (*No.* 5) 1961. Short title and citation.

(2.) The *Sales Tax Act* (*No.* 5) 1930–1960,* as amended by this Act, may be cited as the *Sales Tax Act* (*No.* 5) 1930–1961.

2. This Act shall be deemed to have come into operation on the twenty-second day of February, One thousand nine hundred and sixty-one. Commencement.

3. Sections three and four of the *Sales Tax Act* (*No.* 5) 1930–1960 are repealed and the following sections inserted in their stead:—

"3. Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia on or after the twenty-second day of February, One thousand nine hundred and sixty-one, by a taxpayer. Imposition of tax.

"4. The

* Act No. 34, 1930, as amended by No. 34, 1931; No. 36, 1936; No. 34, 1938; No. 20, 1939; Nos. 7 and 81, 1940; No. 37, 1941; No. 11, 1942; No. 49, 1943; No. 62, 1946; No. 39, 1949; No. 42, 1950; No. 68, 1951; No. 49, 1952; No. 58, 1953; No. 50, 1954; No. 10, 1956; No. 76, 1957; and No. 93, 1960.

F.3861/61.—PRICE 3D.

Rates of tax.

"4. The rates of the sales tax imposed by this Act are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1961—25 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1961—8⅓ per centum;

(*c*) in respect of goods covered by the Fourth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1961—16⅔ per centum;

(*d*) in respect of goods covered by the Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1961—30 per centum; and

(*e*) in respect of goods not covered by the Second, Third, Fourth or Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1961 and on the sale value of which it is not provided by that Act that the sales tax imposed by this Act shall not be payable—12½ per centum.".

Saving.

4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia by a taxpayer on or after the sixteenth day of November, One thousand nine hundred and sixty, and before the date of commencement of this Act continues to be imposed as if those provisions had not been repealed.

By Authority: A. J. Arthur, Commonwealth Government Printer, Canberra.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 74E (adm)
C. A. No. 59-C-1847
RJE

THE COMMONWEALTH OF AUSTRALIA.

SALES TAX (No. 5A).

No. 81 of 1961.

An Act relating to Sales Tax.

[Assented to 27th October, 1961.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1.—(1.) This Act may be cited as the *Sales Tax Act* (*No.* 5A) 1961. Short title and citation.

(2.) Section one of the *Sales Tax Act* (*No.* 5) 1961* is amended by omitting sub-section (2.).

(3.) The *Sales Tax Act* (*No.* 5) 1930–1960,† as amended by the *Sales Tax Act* (*No.* 5) 1961 and by this Act, may be cited as the *Sales Tax Act* (*No.* 5) 1930–1961.

2. This Act shall be deemed to have come into operation on the sixteenth day of August, One thousand nine hundred and sixty-one. Commencement.

3. Sections

* Act No. 6, 1961.
† Act No. 34, 1930, as amended by No. 34, 1931; No. 36, 1936; No. 34, 1938; No. 20, 1939; Nos. 7 and 81, 1940; No. 37, 1941; No. 11, 1942; No. 49, 1943; No. 62, 1946; No. 59, 1949; No. 42, 1950; No. 68, 1951; No. 49, 1952; No. 58, 1953; No. 50, 1954; No. 10, 1956; No. 76, 1957; and No. 93, 1960.

P.10976/61.—Price 3d.

3. Sections three and four of the *Sales Tax Act (No. 5)* 1930–1960, as amended by the *Sales Tax Act (No. 5)* 1961, are repealed and the following sections inserted in their stead:—

Imposition of tax.

"3. Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia on or after the sixteenth day of August, One thousand nine hundred and sixty-one, by a taxpayer.

Rates of tax.

"4. The rates of the sales tax imposed by this Act are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1961—25 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1961—2½ per centum;

(*c*) in respect of goods covered by the Fourth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1961—16⅔ per centum;

(*d*) in respect of goods covered by the Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1961—30 per centum; and

(*e*) in respect of goods not covered by the Second, Third, Fourth or Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1961 and on the sale value of which it is not provided by that Act that the sales tax imposed by this Act shall not be payable—12½ per centum.".

Saving.

4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia by a taxpayer on or after the twenty-second day of February, One thousand nine hundred and sixty-one, and before the date of commencement of this Act, continues to be imposed as if those provisions had not been repealed.

By Authority: A. J. Arthur, Commonwealth Government Printer, Canberra.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 74 Fnd
C. A. No. 59-C-1847

THE COMMONWEALTH OF AUSTRALIA.

SALES TAX (No. 5).

No. 9 of 1962.

An Act to amend the *Sales Tax Act* (*No.* 5) 1930–1961.

[Assented to 23rd March, 1962.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1.—(1.) This Act may be cited as the *Sales Tax Act* (*No.* 5) 1962. Short title and citation.

(2.) The *Sales Tax Act* (*No.* 5) 1930–1961,* as amended by this Act, may be cited as the *Sales Tax Act* (*No.* 5) 1930–1962.

2. This Act shall be deemed to have come into operation on the seventh day of February, One thousand nine hundred and sixty-two. Commencement.

3. Sections three and four of the *Sales Tax Act* (*No.* 5) 1930–1961 are repealed and the following sections inserted in their stead:—

"3. Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia on or after the seventh day of February, One thousand nine hundred and sixty-two, by a taxpayer. Imposition of tax.

"4. The

* Act No. 34, 1930, as amended by No. 34, 1931; No. 36, 1936; No. 34, 1938; No. 20, 1939; Nos. 7 and 81, 1940; No. 37, 1941; No. 11, 1942; No. 49, 1943; No. 62, 1946; No. 59, 1949; No. 42, 1950; No. 68, 1951; No. 49, 1952; No. 58, 1953; No. 50, 1954; No. 10, 1956; No. 76, 1957; No. 93, 1960; and Nos. 6 and 81, 1961.

F.2613/62.—PRICE 3D.

Rates of tax.

"4. The rates of the sales tax imposed by this Act are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1962—25 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1962—2½ per centum;

(*c*) in respect of goods covered by the Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1962—22½ per centum; and

(*d*) in respect of goods not covered by the Second, Third or Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1962 and on the sale value of which it is not provided by that Act that the sales tax imposed by this Act shall not be payable—12½ per centum.".

Saving.

4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia by a taxpayer on or after the sixteenth day of August, One thousand nine hundred and sixty-one, and before the date of commencement of this Act, continues to be imposed as if those provisions had not been repealed.

By Authority: A. J. Arthur, Commonwealth Government Printer, Canberra.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 74G-rd
C. A. No. 59-C-1847

THE COMMONWEALTH OF AUSTRALIA. RJC

SALES TAX (No. 6).

No. 77 of 1957.

An Act to amend the *Sales Tax Act* (*No.* 6) 1930-1956.

[Assented to 12th December, 1957.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1.—(1.) This Act may be cited as the *Sales Tax Act* (*No.* 6) 1957. Short title and citation.

(2.) The *Sales Tax Act* (*No.* 6) 1930–1956, as amended by this Act, may be cited as the *Sales Tax Act* (No. 6) 1930–1957.

2. This Act shall be deemed to have come into operation on the fourth day of September, One thousand nine hundred and fifty-seven. Commencement.

3. Sections three and four of the *Sales Tax Act* (*No.* 6) 1930–1956 are repealed and the following sections inserted in their stead:—

"3. Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia by a taxpayer and, on or after the fourth day of September, One thousand nine hundred and fifty-seven, sold by him or applied by him to his own use. Imposition of tax.

"4. The

* Act No. 36, 1930, as amended by No. 36, 1931; No. 48, 1932; No. 37, 1936; No. 35, 1938; No. 21, 1939; Nos. 8 and 82, 1940; No. 38, 1941; No. 12, 1942; No. 50, 1943; No. 63, 1946; No. 60, 1949; No. 43, 1950; No. 69, 1951; No. 50, 1952; No. 59, 1953; No. 51, 1954; and No. 11, 1956.

F.7451/57.—PRICE 3D.

Rates of tax.

"4. The rates of the sales tax imposed by this Act are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1957—25 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1957—8⅓ per centum;

(*c*) in respect of goods covered by the Fourth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1957—16⅔ per centum;

(*d*) in respect of goods covered by the Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1957—30 per centum; and

(*e*) in respect of goods not covered by the Second, Third, Fourth or Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1957 and on the sale value of which it is not provided by that Act that the sales tax imposed by this Act shall not be payable—12½ per centum.".

Saving.

4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia by a taxpayer and, on or after the fifteenth day of March, One thousand nine hundred and fifty-six, and before the date of commencement of this Act, sold by him or applied by him to his own use continues to be imposed as if those provisions had not been repealed.

By Authority: A. J. Arthur, Commonwealth Government Printer, Canberra.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 74H
C. A. No 59-C-1847

THE COMMONWEALTH OF AUSTRALIA.

SALES TAX (No. 6).

No. 94 of 1960.

An Act to amend the *Sales Tax Act* (*No.* 6) 1930-1957.

[Assented to 14th December, 1960.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title and citation.

1.—(1.) This Act may be cited as the *Sales Tax Act* (*No.* 6) 1960.

(2.) The *Sales Tax Act* (*No.* 6) 1930–1957,* as amended by this Act, may be cited as the *Sales Tax Act* (*No.* 6) 1930–1960.

Commencement.

2. This Act shall be deemed to have come into operation on the sixteenth day of November, One thousand nine hundred and sixty.

3. Sections three and four of the *Sales Tax Act* (*No.* 6) 1930–1957 are repealed and the following sections inserted in their stead:—

Imposition of tax.

"3. Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia by a taxpayer and, on or after the sixteenth day of November, One thousand nine hundred and sixty, sold by him or applied by him to his own use.

"4. The

* Act No. 36, 1930, as amended by No. 86, 1931; No. 48, 1932; No. 37, 1936; No. 35, 1938; No. 21, 1939; Nos. 8 and 82, 1940; No. 38, 1941; No. 12, 1942; No. 50, 1943; No. 63, 1946; No. 60, 1949; No. 43, 1950; No. 69, 1951; No. 50, 1952; No. 39, 1953; No. 51, 1954; No. 11, 1956; and No. 77, 1957.

F.10459/60.—Price 3d.

Rates of tax.

"4. The rates of the sales tax imposed by this Act are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1960—25 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1960—8⅓ per centum;

(*c*) in respect of goods covered by the Fourth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1960—16⅔ per centum;

(*d*) in respect of goods covered by the Fifth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1960—40 per centum; and

(*e*) in respect of goods not covered by the Second, Third, Fourth or Fifth Schedule to the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935–1960 and on the sale value of which it is not provided by that Act that the sales tax imposed by this Act shall not be payable—12½ per centum.".

Saving.

4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia by a taxpayer and, on or after the fourth day of September, One thousand nine hundred and fifty-seven, and before the date of commencement of this Act, sold by him or applied by him to his own use continues to be imposed as if those provisions had not been repealed.

By Authority: A. J. Arthur, Commonwealth Government Printer, Canberra.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 741 in
C. A. No. 59-C-1847

THE COMMONWEALTH OF AUSTRALIA.

SALES TAX (No. 6).

No. 7 of 1961.

An Act to amend the *Sales Tax Act* (*No.* 6) 1930-1960.

[Assented to 4th May, 1961.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1.—(1.) This Act may be cited as the *Sales Tax Act* (*No.* 6) 1961. Short title and citation.

(2.) The *Sales Tax Act* (*No.* 6) 1930–1960,* as amended by this Act, may be cited as the *Sales Tax Act* (*No.* 6) 1930–1961.

2. This Act shall be deemed to have come into operation on the twenty-second day of February, One thousand nine hundred and sixty-one. Commencement.

3. Sections three and four of the *Sales Tax Act* (*No.* 6) 1930–1960 are repealed and the following sections inserted in their stead:—

"3. Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia by a taxpayer and, on or after the twenty-second day of February, One thousand nine hundred and sixty-one, sold by him or applied by him to his own use. Imposition of tax.

"4. The

* Act No. 36, 1930, as amended by No. 36, 1931; No. 48, 1932; No. 37, 1936; No. 35, 1938; No. 21, 1939; Nos. 8 and 82, 1940; No. 38, 1941; No. 12, 1942; No. 30, 1943; No. 63, 1946; No. 60, 1949; No. 43, 1950; No. 69, 1951; No. 50, 1952; No. 59, 1953; No. 51, 1954; No. 11, 1956; No. 77, 1957; and No. 94, 1960.

F.3862/61.—PRICE 3D.

Rates of tax.

"4. The rates of the sales tax imposed by this Act are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1961—25 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1961—8⅓ per centum;

(*c*) in respect of goods covered by the Fourth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1961—16⅔ per centum;

(*d*) in respect of goods covered by the Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1961—30 per centum; and

(*e*) in respect of goods not covered by the Second, Third, Fourth or Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1961 and on the sale value of which it is not provided by that Act that the sales tax imposed by this Act shall not be payable—12½ per centum."

Saving.

4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia by a taxpayer and, on or after the sixteenth day of November, One thousand nine hundred and sixty, and before the date of commencement of this Act, sold by him or applied by him to his own use continues to be imposed as if those provisions had not been repealed.

By Authority: A. J. Arthur, Commonwealth Government Printer, Canberra.

THE COMMONWEALTH OF AUSTRALIA.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 741-28
C. A. No. 59-C-1847
RJC

SALES TAX (No. 6A).

No. 82 of 1961.

An Act relating to Sales Tax.

[Assented to 27th October, 1961.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title and citation.

1.—(1.) This Act may be cited as the *Sales Tax Act (No. 6A) 1961*.

(2.) Section one of the *Sales Tax Act (No. 6) 1961** is amended by omitting sub-section (2.).

(3.) The *Sales Tax Act (No. 6) 1930–1960*.† as amended by the *Sales Tax Act (No. 6) 1961* and by this Act, may be cited as the *Sales Tax Act (No. 6) 1930–1961*.

Commencement.

2. This Act shall be deemed to have come into operation on the sixteenth day of August, One thousand nine hundred and sixty-one.

3. Sections

* Act No. 7, 1961.

† Act No. 36, 1930, as amended by No. 36, 1931; No. 48, 1932; No. 37, 1936; No. 35, 1938; No. 21, 1939; Nos. 8 and 82, 1940; No. 38, 1941; No. 12, 1942; No. 50, 1943; No. 63, 1946; No. 60, 1949; No. 43, 1950; No. 69, 1951; No. 50, 1952; No. 59, 1953; No. 51, 1954; No. 11, 1956; No. 77, 1957; and No. 94, 1960.

F.10377/61.—PRICE 3D.

3. Sections three and four of the *Sales Tax Act (No. 6)* 1930–1960, as amended by the *Sales Tax Act (No. 6)* 1961, are repealed and the following sections inserted in their stead:—

Imposition of tax.

"3. Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia by a taxpayer and, on or after the sixteenth day of August, One thousand nine hundred and sixty-one, sold by him or applied by him to his own use.

Rates of tax.

"4. The rates of the sales tax imposed by this Act are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1961—25 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1961—2½ per centum;

(*c*) in respect of goods covered by the Fourth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1961—16⅔ per centum;

(*d*) in respect of goods covered by the Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1961—30 per centum; and

(*e*) in respect of goods not covered by the Second, Third, Fourth or Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1961 and on the sale value of which it is not provided by that Act that the sales tax imposed by this Act shall not be payable—12½ per centum."

4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia by a taxpayer and, on or after the twenty-second day of February, One thousand nine hundred and sixty-one, and before the date of commencement of this Act, sold by him or applied by him to his own use continues to be imposed as if those provisions had not been repealed.

By Authority: A. J. Arthur, Commonwealth Government Printer, Canberra.

THE COMMONWEALTH OF AUSTRALIA.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 74K
C. A. No. 59-C-1847

SALES TAX (No. 6).

No. 10 of 1962.

An Act to amend the *Sales Tax Act* (*No.* 6) 1930-1961.

[Assented to 23rd March, 1962.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1.—(1.) This Act may be cited as the *Sales Tax Act* (*No.* 6) 1962. Short title and citation.

(2.) The *Sales Tax Act* (*No.* 6) 1930–1961,* as amended by this Act, may be cited as the *Sales Tax Act* (*No.* 6) 1930–1962.

2. This Act shall be deemed to have come into operation on the seventh day of February, One thousand nine hundred and sixty-two. Commencement.

3. Sections three and four of the *Sales Tax Act* (*No.* 6) 1930–1961 are repealed and the following sections inserted in their stead:—

"3. Sales tax is imposed, at the rates specified in the next succeeding section, upon the sale value of goods imported into Australia by a taxpayer and, on or after the seventh day of February, One thousand nine hundred and sixty-two, sold by him or applied by him to his own use. Imposition of tax.

"4. The

* Act No. 36, 1930, as amended by No. 36, 1931; No. 48, 1932; No. 37, 1936; No. 35, 1938; No. 21, 1939; Nos. 8 and 82, 1940; No. 38, 1941; No. 12, 1942; No. 50, 1943; No. 63, 1946; No. 60, 1949; No. 43, 1950; No. 69, 1951; No. 50, 1952; No. 59, 1953; No. 51, 1954; No. 11, 1956; No. 77, 1957; No. 94, 1960; and Nos. 7 and 82, 1961.

F.2614/62.—PRICE 3D.

Rates of tax.

"4. The rates of the sales tax imposed by this Act are—

(*a*) in respect of goods covered by the Second Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1962—25 per centum;

(*b*) in respect of goods covered by the Third Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1962—2½ per centum;

(*c*) in respect of goods covered by the Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1962—22½ per centum; and

(*d*) in respect of goods not covered by the Second, Third or Fifth Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935–1962 and on the sale value of which it is not provided by that Act that the sales tax imposed by this Act shall not be payable—12½ per centum.".

Saving.

4. The sales tax imposed by the provisions repealed by this Act upon the sale value of goods imported into Australia by a taxpayer and, on or after the sixteenth day of August, One thousand nine hundred and sixty-one, and before the date of commencement of this Act, sold by him or applied by him to his own use continues to be imposed as if those provisions had not been repealed.

By Authority: A. J. Arthur, Commonwealth Government Printer, Canberra.

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 744

THE COMMONWEALTH OF AUSTRALIA

SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) ACT 1935-1963.*

An Act relating to exemptions from, and classifications of goods for the purposes of, Sales Tax.

Title amended by No. 76, 1940, s. 3.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Sales Tax (Exemptions and Classifications) Act* 1935-1963.*

Short title.

Short title amended; No. 32, 1918, s. 2.

2. In this Act, unless the contrary intention appears—

Definitions.

Amended by No. 76, 1940, s. 4; and No. 71, 1957, s. 3.

"Sales Tax Assessment Act" means any Act, as in force for the time being, relating to the imposition, assessment and collection of a tax upon the sale value of goods;

* The *Sales Tax (Exemptions and Classifications) Act* 1935–1963 comprises the *Sales Tax Exemptions Act* 1935 as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table:—

Act.	Number and Year.	Date of Assent.	Date of Commencement.
Sales Tax Exemptions Act 1935 ..	No. 60, 1935	7th December, 1935	7th December, 1935
Sales Tax Exemptions Act 1936 ..	No. 41, 1936	2nd October, 1936 ..	26th September, 1936, except as otherwise provided by section 5
Sales Tax Exemptions Act 1938 ..	No. 78, 1938	13th December, 1938	13th December, 1938, except as otherwise provided by section 4
Sales Tax Exemptions Act 1939 ..	No. 32, 1939	26th September, 1939	26th September, 1939, except as otherwise provided by section 4
Sales Tax Exemptions Act 1940 ..	No. 29, 1940	1st June, 1940 ..	3rd June, 1940, except as otherwise provided by section 4
Sales Tax (Exemptions and Classifications) Act 1940	No. 76, 1940	16th December, 1940	22nd November, 1940
Sales Tax (Exemptions and Classifications) Act 1941	No. 32, 1941	25th November, 1941	30th October, 1941, except as otherwise provided by section 3
Sales Tax (Exemptions and Classifications) Act 1942	No. 6, 1942	18th May, 1942 ..	1st May, 1942, except as otherwise provided by section 6
Sales Tax (Exemptions and Classifications) Act 1943	No. 35, 1943	3rd July, 1943 ..	3rd July, 1943, except as otherwise provided by section 6
Sales Tax (Exemptions and Classifications) Act (No. 2) 1943	No. 44, 1943	19th October, 1943	21st July, 1943
Sales Tax (Exemptions and Classifications) Act 1944	No. 31, 1944	6th October, 1944 ..	8th September, 1944
Sales Tax (Exemptions and Classifications) Act 1945	No. 36, 1945	11th October, 1945	13th September, 1945, except as otherwise provided by section 2
Sales Tax (Exemptions and Classifications) Act 1946	No. 12, 1946	18th April, 1946 ..	10th April, 1946, except as otherwise provided by section 2
Sales Tax (Exemptions and Classifications) Act (No. 2) 1946	No. 67, 1946	11th December, 1946	15th November, 1946, except as otherwise provided by section 2
Sales Tax (Exemptions and Classifications) Act 1947	No. 65, 1947	4th December, 1947	20th September, 1947, except as otherwise provided by section 2

See foot of page 2 for continuation of footnotes.

12171/63.—PRICE 4s. 6d.

"the Customs Tariff" means the *Customs Tariff* 1933-1954 as amended by any Act, and as proposed to be amended by Customs Tariff Proposals introduced into the House of Representatives;

"the Excise Tariff" means the *Excise Tariff* 1921-1956 as amended by any Act, and as proposed to be amended by Excise Tariff Proposals introduced into the House of Representatives.

* * * * * * *

Interpretation.

Sub-section (1.) substituted by No. 76, 1940, s. 5.

Substituted by No. 44, 1943, s. 3.

3.—(1.) Any expression used in this Act shall, unless the contrary intention appears, have the same meaning as in the relevant Sales Tax Assessment Act.

(2.) The heading to any Schedule to this Act or to any Division in any Schedule to this Act shall not be read as affecting the interpretation of that Schedule or of any item in that Schedule.

Amended by No. 76, 1940, s. 5.

(3.) Any reference in the second column of the First Schedule to this Act to the numbers 1, 2, 3, 4, 5, 6, 7, 8 or 9 shall be read respectively as a reference to the—

Sales Tax Assessment Act (No. 1) 1930-1935,
Sales Tax Assessment Act (No. 2) 1930-1935,
Sales Tax Assessment Act (No. 3) 1930-1935,

Footnote continued from previous page.

Act.	Number and Year.	Date of Assent.	Date of Commencement.
Sales Tax (Exemptions and Classifications) Act 1948	No 65, 19[illegible]	4th December, 1947	20th September 1947, except as otherwise provided by section 2
Sales Tax (Exemptions and Classifications) Act 1948	No. 42, 1948	4th November, 1948	9th September, 1948, except as otherwise provided by section 2
Sales Tax (Exemptions and Classifications) Act 1949	No. 54, 1949	28th October, 1949	8th September, 1949, except as otherwise provided by section 2
Sales Tax (Exemptions and Classifications) Act 1950	No. 37, 1950	14th December, 1950	13th October, 1950
Sales Tax (Exemptions and Classifications) Act 1951	No. 42, 1951	5th December, 1951	27th September, 1951, except as otherwise provided by section 2
Sales Tax (Exemptions and Classifications) Act 1952	No. 44, 1952	30th September, 1952	7th August, 1952
Sales Tax (Exemptions and Classifications) Act 1953	No. 53, 1953	28th October, 1953	10th September, 1953
Sales Tax (Exemptions and Classifications) Act 1954	No. 45, 1954	6th November, 1954	19th August, 1954, except as otherwise provided by section 2
Sales Tax (Exemptions and Classifications) Act 1956	No. 5, 1956	12th May, 1956 ..	15th March, 1956
Sales Tax (Exemptions and Classifications) Act 1957	No. 71, 1957	12th December, 1957	4th September, 1957, except as otherwise provided by section 2
Sales Tax (Exemptions and Classifications) Act 1959	No. 17, 1959	23rd April, 1959 ..	*See* Note 1 below
Sales Tax (Exemptions and Classifications) Act (No. 2) 1959	No. 92, 1959	4th December, 1959	14th December, 1959, except as otherwise provided by Sub-section (6) of section 1
Sales Tax (Exemptions and Classifications) Act 1960	No. 65, 1960	30th November, 1960	17th August, 1960, except as otherwise provided by section 2
Sales Tax (Exemptions and Classifications) Act (No. 2) 1960	No. 88, 1960	14th December, 1960	16th November, 1960
Sales Tax (Exemptions and Classifications) Act 1961	No. 1, 1961	4th May, 1961	22nd February, 1961
Sales Tax (Exemptions and Classifications) Act (No. 2) 1961	No. 76, 1961	27th October, 1961..	16th August, 1961
Sales Tax (Exemptions and Classifications) Act 1962	No. 4, 1962	23rd March, 1962 ..	7th February, 1962
Sales Tax (Exemptions and Classifications) Act 1963	No. 44, 1963	20th December, 1962	14th August, 1963, except as otherwise provided by section 2

Note 1. Section 2 of the *Sales Tax (Exemptions and Classifications) Act* 1959 provides as follows:—"This Act shall come into operation on the day on which the *Reserve Bank Act* 1959 comes into operation.".

The date of commencement of the *Reserve Bank Act* 1959 was 14th January, 1960. See *Commonwealth Gazette* 1960 page 47.

but to no other Sales Tax Assessment Act, the goods covered by that item or sub-item shall not be deemed to include goods which are imported into Australia.

(3.) Where, in the second column of the First Schedule to this Act reference is made, opposite an item or sub-item in the first column of that Schedule, to the *Sales Tax Assessment Act (No. 9) 1930-1935* and to any one or more of the following Acts:—

Sales Tax Assessment Act (No. 5) 1930-1935,
Sales Tax Assessment Act (No. 6) 1930-1935,
Sales Tax Assessment Act (No. 7) 1930-1935,
Sales Tax Assessment Act (No. 8) 1930-1935,

but to no other Sales Tax Assessment Act, the goods covered by that item or sub-item shall not be deemed to include goods which are manufactured or produced in Australia.

Goods incorporating cathode ray tubes.
Substituted by No. 71, 1957, s. 5; amended by No. 65, 1960, s. 3.

6. Notwithstanding anything contained in any Sales Tax Assessment Act, sales tax is not payable upon so much of the sale value under any Sales Tax Assessment Act of goods in which are incorporated any cathode ray tubes as specified in item 121 in the First Schedule to this Act as is equal to the amount which would have been the sale value of those cathode ray tubes under that Act if the transaction, act or operation in relation to which the first-mentioned sale value arose had been a transaction, act or operation in relation to those cathode ray tubes only.

Pre-fabricated buildings.
Inserted by No. 36, 1945, s. 3.

6A.—(1.) Notwithstanding anything contained in any Sales Tax Assessment Act, sales tax shall not be payable upon so much of the sale value under any Sales Tax Assessment Act of any pre-fabricated building or pre-fabricated building section which is made of timber, metal, fibro-cement or any other materials or combinations of materials as exceeds the amount which, in the opinion of the Commissioner, would have been the sale value of the taxable goods (if any) incorporated in the building or section if the transaction, act or operation in relation to the sale value of the building or section had been a transaction, act or operation in relation to those taxable goods only.

(2.) In this section "taxable goods" means goods which, if sold separately, would not be covered by any item in the First Schedule to this Act.

Goods incorporating tanks.
Inserted by No. 65, 1960, s. 4.

6AA. Notwithstanding anything contained in any Sales Tax Assessment Act, sales tax is not payable upon so much of the sale value under any Sales Tax Assessment Act of goods in which are incorporated any tanks as specified in sub-item (11) of item 7 in the First Schedule to this Act as is equal to the amount which, in the opinion of the Commissioner, would have been the sale value of those tanks under that Act if the transaction, act or operation in relation to which the first-mentioned sale value arose had been a transaction, act or operation in relation to those tanks only.

Plaintiff's Exhibit No. 75

THE FIRST SCHEDULE—*continued.*

Sales Tax Exemption Items.	Acts to which Exemption Applies.
DIVISION XV.—MISCELLANEOUS—*continued.*	
144.—(1) Goods, &c.—*continued.*	
(2) Goods for use in the repair of, so as to form part of the defective part first-mentioned in the last preceding sub-item if that part will, after repair—	
(*a*) be used in replacing free of charge another defective part; or	Nos. 1 to 9
(*b*) be used in, wrought into or attached to goods to be manufactured	
Added by No. 71,1957, s. 6; substituted by No. 44, 1963, s. 3. 145. Samples and other consumable goods, being goods covered by item 404 in the Schedule to the Customs Tariff	No. 5
Added by No. 71, 1957, s. 6. 146.—(1) Equipment and apparatus, being goods of a kind used exclusively, or primarily and principally, in preventing or combating fire	Nos. 1 to 9
(2) Parts and accessories for, and materials for use in the repair or maintenance of, goods covered by the last preceding sub-item	Nos. 1 to 9
(3) Chemicals and other preparations for use in fire fighting appliances	Nos. 1 to 9

Added by No. 76, 1940, s. 9; substituted by No. 53, 1953, s. 5.

SECOND SCHEDULE.

Section 6B.

Item No.	Specification of Goods.
Amended by No. 71, 1957, s. 7. 1	Jewellery and imitation jewellery (but not including wedding rings covered by item 138 in the First Schedule to this Act), precious stones, semi-precious stones, pearls, cultured pearls, imitation, reconstructed or synthetic stones and pearls and personal adornments, but not including goods of a kind used exclusively, or primarily and principally, as parts of clothes for human wear
Amended by No. 65, 1960, s. 6. 2	Plate made wholly or principally of platinum, gold, silver or other precious metal and plated ware plated with platinum, gold or other precious metal (other than silver), including articles of rolled gold and gold filled articles, but not including— (*a*) knives, forks, spoons or other cutlery; (*b*) scissors; (*c*) cutlery sharpeners; (*d*) school or university badges or badges which denote membership of organizations or associations of persons; or (*e*) goods covered by any item in the First Schedule to this Act
Items 3 and 4 omitted by No. 65, 1960, s. 6.	
5	Studs, sleeve links, tie chains, tie clips, collar pins, tie pins, gold or silver safety pins and chains for those pins
6	Field glasses, marine glasses and opera glasses and cases for those goods

SECOND SCHEDULE—*continued.*

Item No.	Specification of Goods.
33	Shaving sticks, shaving creams, shaving soaps, shaving powders, shaving tablets, styptic pencils and liquids and other preparations for use before or after shaving
34	Shaving sets containing any goods covered by item 31, 32 or 33 in this Schedule
35	Toilet or dressing cases and toilet or dressing sets, including home hair waving sets, hair brushes, hair combs, eye-brow brushes, hand mirrors, clothes brushes, hat brushes, manicure and pedicure sets and pieces, dressing table sets and hair tidies
36	Cameras (including cinematograph and stereo cameras), photomatons and machines for taking photographs, but not including photographic equipment of a kind used exclusively or primarily and principally in the reproduction of documents, drawings and plans
37	Photographic enlarging and reducing apparatus, but not including photographic equipment of a kind used exclusively or primarily and principally in the reproduction of documents, drawings and plans
38	Accessories and parts for goods covered by item 36 or 37 in this Schedule
39	Photographs not covered by item 52 in the First Schedule to this Act, including stereoscopic views produced by means of photography and photographs wholly or partly coloured by hand
40	Lantern, screen and camera slides
41	The following goods (not being goods covered by item 52 in the First Schedule to this Act or negatives or positives produced by processing cinematograph film), namely:— (*a*) photographic negatives produced for sale; (*b*) positives produced by processing photographic film; and (*c*) transparencies and reversals
42	Photographic materials and products not covered by item 43 in the First Schedule to this Act, namely:— (*a*) unexposed photographic plates and film, including sensitized film for cinematograph cameras; (*b*) photographic sensitized paper, cards, board, linen and other sensitized materials; and (*c*) mounts, plaques and medallions, but not including sensitized materials of a kind produced and marketed specifically for use in the reproduction of documents, drawings and plans
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Item 43 omitted by No. 5, 1956, s. 4.
Items 44, 45 and 46 omitted by No. 71, 1957, s. 7.

47	Gramophones, phonographs, musical boxes and musical machines
48	Wireless receiving sets (not being goods for use in the conduct of public commercial telecommunications services by an authority constituted under any law of the Commonwealth or of a State); television receiving sets; record players and pick-ups; combined wireless receiving sets and gramophones; combined television receiving sets and gramophones; combined wireless receiving sets and television receiving sets; combined wireless receiving sets, television receiving sets and gramophones
49	Records for gramophones and phonographs; protective envelopes, stands, cabinets and other equipment designed for the storage of those records

Amended by No. 45, 1954, s. 5; substituted by No. 5, 1956, s. 4; amended by No. 44, 1963, s. 4.

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	• • • • • • • • • •

Items 50 and 51 omitted by No. 45, 1954, s. 5.

52	Accessories and parts (but not including batteries or cathode ray tubes) for goods covered by item 47, 48 or 49 in this Schedule

Amended by No. 45, 1954, s. 5; and No. 65, 1960, s. 6

PLAINTIFF'S EXHIBIT No. 76

2 Introduction of Import Licensing

Import licensing was ultimately brought into operation on and from the 1st December, 1939 following the promulgation of the Customs (Import Licensing) Regu-
3 lations by Stat. Rules No. 163 of 1939 under the Customs Act 1901—1936, Section 52 (g) which read:

"52. The following goods are prohibited imports . . .

(g) All goods the importation of which may be prohibited by Regulation."

The main provision of the Regulations read as follows (Reg. 3):

"The importation of any goods shall be prohibited unless:

(a) a licence to import the goods is in force and the terms and conditions (if any) to which the licence is subject are complied with; or

(b) the goods are excepted from the application of these Regulations."

• • •

6 Apart from categories A to D and references to a percentage of base year imports, there were several other symbols used from time to time in the Schedule of Categories, to indicate the basis of licensing. These were as follows:—

"Admin" indicated that quota restrictions did not apply and that applications for licenses were dealt with individually on their merits by the Central Licensing Administration.

"N.L." indicated that the importation of the goods was totally prohibited.

• • •

11 The End of the War and the Post-War Period to March, 1952.

Following the end of the war, an examination of the question of relaxing the import licensing controls revealed the

following points associated with the different monetary areas:

• • •

B.(i) Dollar Area—United States.

The sterling area's holdings of United States dollars were held in a common "pool" from which all members of the sterling area drew to meet their own particular essential requirements. The end of Lend Lease, resulting in the resumption of trading in many commodities on a normal commercial basis, meant that a reasonably large reserve of dollars should be held to meet even essential requirements. Current trends indicated that the balance available would not be adequate to meet requirements unless each member of the sterling area continued to apply measures to eliminate expenditure of dollars on less essential items.

• • •

12 As a clearer picture of Australia's post-war trade emerged, it was possible to distinguish between four different currency (and thus licensing) groups vis:—

(a) United Kingdom.
(b) Sterling area other than the United Kingdom.
(c) Easy currency countries.
(d) Hard currency countries.

• • •

13 The "hard" currency group.

The instruction of August, 1946, referred to above stated that "all other countries are to be treated as hard currency countries, and it should be noted that the United States dollar area, Sweden, Switzerland, Portugal and the Portuguese colonies, Argentine and Urugnay are regarded as being hardest of all.

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14 On 5th September, 1947 imports from the dollar area became subject to much more severe restrictions than

those applying to other hard currency countries, the general criteria for these latter themselves being comparatively severe in that the issue of licences was restricted to essential goods not available from easier currency sources.

• • •

During 1950 imports from the dollar area continued to be licensed against the dollar budget, the value of allocations for individual items varying in accordance with moves in the degree of essentiality, availability etc.

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The position as at March, 1952 can therefore be summarised as follows.

• • •

(e) Goods of dollar area origin (petroleum products excluded) were strictly limited under the dollar budget to, as a general rule, essentials not obtainable from other sources;

• • •

The import restrictions which were already applied to good of dollar area and Japanese origin were unchanged as a result of the general extension of 8th March, 1952 except that there was a consequent general tightening on the volume of imports which could be secured from both sources. The controls which had applied to a number of commodities of sterling and easy currency country origin and to the intermediate countries were absorbed into the system applied to non-dollar, non-Japanese imports as a whole.

• • •

At the end of 1956 revised Import Licensing Regulations were promulgated under Stat. Rules 93 of 1956, the original Regulations of 1939 being superseded by these Regulations. The change in the Regulations basically aimed at enabling a security to be applied against an import licence

so that conditions as to disposal, end-use etc. after importation could be enforced.

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44 The 1st April, 1959 Changes.

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Several important administrative changes were implemented as from 1st April. The most significant was the removal of licensing discrimination against a wide range of dollar goods. Some 330 items were involved covering trade worth about £170m. f.o.b. at an annual rate. This action, which was in line with the decision taken at the Montreal Trade and Economic Conference in September, 1958, was another major step in the orderly dismantling of Australia's dollar discrimination. The move meant that approximately 70% of imports were freed from discrimination.

• • •

PLAINTIFF'S EXHIBIT NO. 87
IMPORT, EXPORT AND CUSTOMS POWERS (DEFENCE) ACT, 1939.
2 & 3 Geo. 6. Ch. 69.

* * *

CHAPTER 69.

An Act to provide for controlling the importation, exportation and carriage coastwise of goods and the shipment of goods as ships' stores; to provide for facilitating the enforcement of the law relating to the matters aforesaid and the law relating to trading with the enemy; and to provide for purposes connected with the matters aforesaid.

[1st September 1939.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) The Board of Trade may by order make such provisions as the Board think expedient for prohibiting or regulating, in all cases or any specified classes of cases, and subject to such exceptions, if any, as may be made by or under the order, the importation into, or exportation from, the United Kingdom or any specified part thereof, or the carriage coastwise or the shipment as ships' stores, of all goods or goods of any specified description.

* * *

3.—(1) If any goods—

(*a*) are imported, exported, carried coastwise or shipped as ships' stores in contravention either of an order under this Act or of the law relating to trading with the enemy, or

(*b*) are brought to any quay or other place, or waterborne, for the purpose of being exported or of being so carried or shipped in contravention either of an order under this Act or of the law relating to trading with the enemy,

those goods shall be deemed to be prohibited goods and shall be forfeited; and the exporter of the goods or his agent, or the shipper of the goods, shall be liable, in addition to any other penalty under the enactments relating to customs, to a customs penalty of five hundred pounds.

* * *

STATUTORY INSTRUMENTS

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 88
C. A. No. 59-C-1847

1954 No. 23

CUSTOMS

IMPORT OF GOODS (CONTROL)

The Import of Goods (Control) Order, 1954

Made - - - - 14*th January*, 1954
Coming into Operation 21*st January*, 1954

The Board of Trade, in exercise of the powers conferred upon them by Section 1 of the Import, Export and Customs Powers (Defence) Act, 1939(a), and all other powers enabling them in that behalf, do hereby order as follows:—

Prohibition on importation

1. Subject to the provisions of this Order, all goods are prohibited to be imported into the United Kingdom.

Licensed imports

2. Nothing in Article 1 hereof shall be taken to prohibit the importation of any goods under the authority of any licence granted by the Board of Trade under this Article and in accordance with any condition attached thereto.

Channel Islands

3. Nothing in Article 1 hereof shall be taken to prohibit the importation of any goods which are proved to the satisfaction of the Commissioners of Customs and Excise to have been consigned from the Channel Islands, other than—

(*a*) dyes, dyestuffs and intermediates, the following:—
  (i) synthetic organic dyestuffs (including pigment dyestuffs), whether soluble or insoluble;
  (ii) compounds, preparations and articles manufactured from any such dyestuffs, except any such compounds, preparations and articles as are not suitable for use in dyeing;
  (iii) organic intermediate products used in the manufacture of any such dyestuffs;

(*b*) arms and ammunition, the following:—
  (i) firearms, lethal, including any lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged and other weapons of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing;
  (ii) component parts of any such firearm or other weapon as aforesaid, and any accessory to any such firearm or other weapon designed or adapted to diminish the noise or flash caused by firing the weapon;
  (iii) ammunition, including grenades, bombs and other like missiles, and any ammunition containing or designed or adapted to contain any noxious liquid, gas or other thing, and component parts of any such ammunition;

(a) 2 & 3 Geo. 6. c. 69.

(c) plumage, other than plumage of birds imported alive and other than plumage of birds ordinarily used in the United Kingdom as articles of diet.

False statements etc.

4. If for the purpose of obtaining a licence under this Order, any person makes any statement or furnishes any document or information which to his knowledge is false in a material particular, or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence and be liable on summary conviction to a fine not exceeding five hundred pounds or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment; and any licence which may have been granted in connection with the application for which the false statement was made or the false document or information was furnished shall be void as from the time when the licence was granted.

Licences

5.—(1) Any licence granted under Article 2 hereof may be modified or revoked by the Board of Trade at any time.

(2) Any current licence granted under any Order hereby revoked shall, for the purposes of this Order, have effect as if it had been granted under Article 2 hereof.

Interpretation and revocation

6.—(1) In this Order "goods", unless otherwise specified, means both used and unused goods.

(2) The Interpretation Act, 1889(b), shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament and as if this Order and the Orders hereby revoked were Acts of Parliament.

7. The Import of Goods (Control) Order, 1940(c), the Import of Goods (Control) Order, 1945(d), the Import of Goods (Control) (No. 2) Order, 1945(e), and the Import of Goods (Control) (Amendment) Order, 1952(f), are hereby revoked.

Citation and Commencement

8. This Order may be cited as the Import of Goods (Control) Order, 1954, and shall come into operation on the 21st day of January, 1954.

Dated this 14th day of January, 1954.

Ralph M. Nowell,
An Under-Secretary of the Board of Trade.

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

This Order supersedes the Import of Goods (Control) Order, 1940, as amended.

The principal change is that where false information has been given for the purpose of obtaining a licence, the licence is void from the time when it was granted.

(b) 52 & 53 Vict. c. 63.
(c) S.R. & O. 1940/873; Rev. V. p. 472; 1940 I, p. 316.
(d) S.R. & O. 1945/1356; Rev. V, p. 472; 1945 I, p. 156.
(e) S.R. & O. 1945/1571; Rev. V, p. 472; 1945 I, p. 157.
(f) S.I. 1952/1204; 1952 I, p. 759.

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H.M.P. (7) Wt. 53-K2-4681

(3)

RETURN TO BOARD OF TRADE

BOARD OF TRADE

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exh. No. 92 ad
C. A. No. 59-C-1847

IMPORT LICENSING BRANCH KJC

SUMMARY OF IMPORT LICENSING REGULATIONS

Notice to Importers No. 401.

This Notice supersedes one published in June, 1948, (Notice to Importers No. 292). Its purpose is to summarise the various import licensing regulations which are of general application, and to present in a consolidated form the various Open General Licences in force on 21st September, 1950.

1. Scope of Control. The Import, Export and Customs Powers (Defence) Act, 1939, gives the Board of Trade power to make Orders prohibiting or regulating the import and export of goods. Under the Import of Goods (Control) Order 1940 (S.R. &/O. 1940, No. 873), as amended, the importation into the United Kingdom of all goods is prohibited except under the authority of a licence granted by the Board of Trade. This Order was varied by the Import of Goods (Control) Order, 1945, (S.R. & O. 1945, No. 1356), which permits the importation of goods other than dyes and dyestuffs, arms and ammunition and plumage, consigned from the Channel Islands.

2. Open General Licence. A separate licence is not required for any goods covered by an Open General Licence issued by the Board of Trade and these goods may be imported without application to the Import Licensing Branch of that Department. An Open General Licence has been issued in respect of:

(*a*) Goods shown in Appendix I consigned from any country.

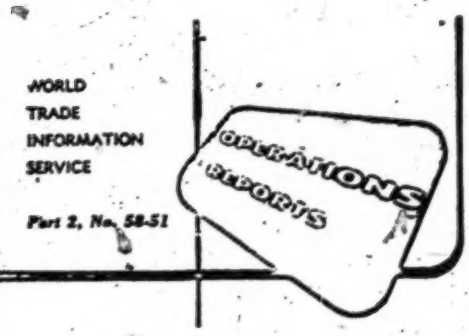
(*b*) Goods shown in Appendix II consigned from and originating in particular countries and territories.

(*Note.*—Goods consigned from a permitted country and originating in another permitted country are covered but not goods originating in one of the excepted countries even if they are consigned from a permitted country). This Open General Licence was issued in accordance with the policy for the liberalisation of trade.

(*c*) Goods shown in Appendix III consigned from and originating in countries and territories which differ from those in Appendix II. (See Note under (*b*)).

(*d*) Goods shown in Appendix IV which are consigned from any part of the British Commonwealth, Burma, or the Irish Republic, subject to the condition that a claim to Imperial Preference is established in respect of any duty of Customs to which the goods as a whole may be liable on importation into the United Kingdom.

Plaintiff's Exhibit No. 104



Part 2, No. 58-51

Licensing and exchange controls . . . United Kingdom

Hazeltine Research Inc.
vs. Zenith Radio Corporation
Plaintiff's Exn. No. 104 id
C. A. No.
59 C 1A

United Kingdom's Import Controls

Import Licensing Policy

Since the beginning of World War II, and throughout the postwar period, the United Kingdom has rationed what are considered to be scarce supplies of dollar exchange for what their import licensing authorities believe to be the most essential needs of the British economy. At present, according to the British Board of Trade (BOT), about two-thirds of imports from the dollar area[1], by value, have been freed of controls. In the remaining sector, which consists mostly of manufactured goods, import licenses issued by the BOT are still required for entry. The issuance of a license by the BOT automatically entitles the holder to an exchange permit to make payment for the goods in dollars.

Import licenses are also required for a limited list of imports from nondollar countries, although goods from the British Commonwealth (except Canada) are mainly free of controls. Imports from the other Organization for European Economic Cooperation (OEEC) countries in Western Europe are 94 percent free of controls.

Under the import licensing policies adopted to carry out the essentiality criterion, licenses have generally been issued for the import from the United States or other dollar countries of only those goods which the Import Licensing Branch of the BOT considers to be essential to the United Kingdom's economy, and for which a suitable substitute is not alternatively available from domestic or other nondollar sources of supply.

Since each case is considered on its own merits, however, there are some exceptions made to this general rule. In the case of an item considered essential, for example, an import license may be granted despite the availability from nondollar sources of a suitable substitute because the American product offers a substantial price advantage or the delivery date is a crucial factor. Licenses are sometimes also issued to import either an essential or nonessential American product, for example, when the British importer can demonstrate that the use of such dollar components would result in an export which could not otherwise have taken place because of the overseas customer's preference for the superior or unique qualities of the U.S.-made item. In addition, for such an important dollar import as machinery, applicants for licenses are asked to indicate only that these items are not available from domestic production. No indication is required as to whether alternative machines are obtainable from nondollar sources outside the United Kingdom.

Under this licensing regime, imports from the United States have been restricted largely to raw materials, basic food and foodstuffs, and industrial equipment and other capital goods. However, special quotas have been established for the import of a considerable number of so-called less-essential or consumer goods from the United States.

It is the stated objective of the British Government to move as rapidly as it believes its balance-of-payments position will allow to further reduce its controls on imports from the United States and other dollar countries. The official statements made to this effect recognize the economic benefits, in terms of the cost-price structure and productivity of the British economy, to be derived from permitting producers to choose their raw materials and supplies on the basis of price and quality considerations without reference to the currency which must be paid for such purchases. The statements also recognize the desirability of freeing their importers and the Government agencies involved from the burdensome paperwork necessitated by import controls.

Until mid-1955, when the United Kingdom's external finances took a turn for the worse, considerable progress was made toward freeing Britain's dollar imports. The United Kingdom resumed its program of progressive dollar trade liberalization in August 1957 by removing import controls on some 500 additional commodities from the dollar area. These and a few additional items removed from time to time since then have increased

[1]The following countries comprise the dollar area: United States and possessions, Canada, Bolivia, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Haiti, Honduras Republic, Liberia, Mexico, Nicaragua, Panama, El Salvador, Venezuela, and the Philippine Republic.

UNITED STATES DEPARTMENT OF COMMERCE • Sinclair Weeks, Secretary
BUREAU OF FOREIGN COMMERCE • Loring K. Macy, Director

For sale by the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C., and by U. S. Department of Commerce Field Offices. WTIS, Part 2: Annual subscription, $6 ($2.50 additional for foreign mailing); single copy, 10 cents.

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621881—58——No. 5

the share of imports from the dollar areas which are free of quantitative restriction to about two-thirds by value of the United Kingdom's total dollar imports.

The pattern of the United Kingdom's program for dollar trade liberalization is shown in the nature of the goods which have been included in the world open general license list. That list includes goods that may be imported from any source, including the dollar area, without license. The object is to liberalize in the first instance the raw materials, semimanufactures, and basic food and feedstuffs required to keep British industry and agriculture operating efficiently and at capacity. A large number of these items have until now been imported under open individual licenses, which do not restrict quantity, or under specific licenses, which have in practice been freely issued. The August 1947 additions to the open general license list virtually eliminated the controls on the basic raw materials of industry.

Existing restrictions will continue to apply to dollar imports of machinery, fuels, many food items, and most manufactured products. It is reasonable to assume that any further progressive decontrol of dollar imports, items in the machinery, fuel and chemicals categories, for example, will have a higher order of priority than most categories of consumer goods.

Import Licensing and Exchange Controls

The importer applies for licenses at the Board of Trade, Import Licensing Branch, 43 Marsham St., London, S.W. 1., for all imports subject to import licensing controls. If the BOT grants a license, and the import is of a value of not less than £500 (£1 equals US$2.80) the importer takes the license to his local bank which upon application will then issue an exchange permit entitling him to the exchange with which to pay for the goods. Application forms are not required to be completed for payments for imports valued at £500 or less. However, approval for payment for shipments of whatever value (including those requiring the completion of application forms) must be supported (1) by valid import licenses (or if import licenses are not required, confirmation that the import is permitted under open general license), and (2) by such documentary evidence of the purchase and value of the goods as may be available, e. g., pro-forma invoices, contracts, and confirmations of orders.

Most import licenses are valid for 6 months. Extensions of the validity period may be obtained, however, on application to the BOT when there has been an unavoidable delay in shipment or for some other valid reason.

Within the category of goods subject to control there are a number of dollar commodities and manufactured goods for which the restrictions on importing from the United States have been partially eased but these also require individual license applications. Licenses for them are usually granted freely however. These include goods on open individual licenses, which means that licenses are required by the BOT mainly for accounting purposes and are therefore freely issued. Goods on open individual license include ash and hickory tool handles, raw cotton, and sugar. Quotas have also been set up for a number of other items from the United States and licenses within the limit of the specified quotas are freely issued.

Quotas are now in effect for the following dollar goods in the amounts and for the periods stated:

Leather—$3.6 million a year f. o. b. from all dollar countries.

Automobiles—800 automobiles per year from the United States and Canada.

Motorcycles—annual quota of 50 from the United States.

Periodicals for newsstand sale—a yearly quota of $1,700,000 for the import of U. S. magazines and periodicals in bulk for newsstand sale, but single copies of magazines and periodicals imported through the mail do not require import licenses.

Money—annual dollar quota of at least $234,000, valid until June 30, 1948.

Canned salmon—annual quota on dollar canned salmon currently $12.6 million, licenses valid until June 30, 1948.

Natural cheese—annual North American quota of $4.2 million, and licenses valid until June 30, 1948.

Fresh, dried and canned fruits—annual quotas of $20 million, f.o.b. a year from all dollar countries.

British Token Import Plan.—The Token Plan was set up by the British Government in 1946 to afford an opportunity to firms which had established a prewar market in the United Kingdom, to maintain token quantities of their products on the British market until such time as they could again be imported freely. The approved list contains some 200 commodity groups, principally consumer goods, which would not ordinarily be licensed for import from the United States or Canada under the operation of the present United Kingdom import licensing regime.

Under the plan, the British Government will permit imports in a yearly amount not to exceed 30 percent of the value of the average annual shipments of the specified commodities of each qualified exporter during the 1936-38 base period. The British Government requires appropriate evidence, issued under authority of the United States Government, that manufacturers wishing to take advantage of opportunities under the arrangement did in fact make shipments of the commodities to the United Kingdom during the base period. The U. S. Bureau of Foreign Commerce has agreed to act as certifying agent and to issue appropriate certificates, in the form of token quota vouchers, which the exporter forwards to the British importer of his choice for presentation to the BOT as a basis for obtaining an import license.

Originally designed as a temporary measure for the immediate post World War II period, the plan has had to be extended much longer than anticipated. When it became apparent that there were some firms which were eligible to participate in the plan on the basis of their prewar exports but were either unable or not interested in using these quotas, the Department of Commerce obtained the approval of the BOT to a procedure under which the Bureau of Foreign Commerce redistributes these unused quotas to qualified applicants.

In all, the plan provides quotas of about $5.5 million for [illegible] of the items involved. These include canned soups and vegetables; cigarettes and smoking tobacco; apparel and footwear; textile piece goods; household electrical appliances; stationery and office supplies; medicinal preparations; toys and sporting goods; and, artificial teeth and dental equipment.

License-Free Goods.—Within the area of goods which have been freed of controls, there is a wide range of items of interest to American exporters. On the world open general license list, which are the goods that may be imported from any source without a license, are the following:

Nearly all foodstuffs, grains and cereals; wheat flour; natural or refined bicarbonate soda; borax; lard; molasses; whisky; cheeses and cheese preparations (in bulk or unadvanced); dried beans and peas; various petroleum motor fuels and power fuels; wood pulps as well as [illegible]; peanuts; quicksilver, peanut, linseed, and soya bean oil; nearly all industrial chemicals and laundry and dyestuffs.

Most of the basic inorganic fertilizers; ... pharmaceutical glands and ofals; some cellulose acetate and polyvinyl plastics materials; a variety of hides and skins, including fur skins; both hardwood and softwood lumber not further prepared than hewn, sawn, ... aned, or dressed, including flooring block, staves, and cashboards for railroad ties; telegraph, transmission, ladder, and scaffold poles; mining timber; boxboards; shingles; and certain other types of siding.

Besides chemicals, other manufactured items on this list which may be imported freely from the United States include printing blocks, plates and cylinders, and impressed flongs and matrices, for use in printing processes; refractory or heat insulating bricks, blocks, and other shapes; a wide range of iron and steel (including alloy steel) and nonferrous metals primary forms and shapes, pipes, tubes, and hollow sections, wire and cable; railway rails; solder; nonfiction books; some paper and paperboard; a number of types of fiber building boards; plywood; and wood veneers.

Although these goods may be imported freely without regard to licensing procedures, exchange control approval for all payments must still be obtained from the importer's local bank and application forms completed for all shipments valued at £500 or over.

United Kingdom's Export Controls

Export Licensing Policy

The British export licensing system (as it is today) evolved mainly from the controls maintained over exports during World War II under the Import, Export and Customs Powers (Defence) Act, 1939, and implemented by the various export control orders issued under the act since then.

After the cessation of hostilities and until April 1949 the list of controlled goods diminished considerably, relaxations covering some raw materials, most types of machinery, many articles of clothing and apparel, a long list of chemicals and chemical products, and wide ranges of electrical and metal manufactures. In April 1949, controls were reinstituted and have continued to be maintained over a wide range of strategic goods when exported to Soviet bloc countries. These controls on strategic goods are maintained in agreement with friendly countries (Cocom) which cooperate to control their exports to the bloc.

The items controlled for strategic reasons include those on which export is prohibited entirely and some on which export is permitted provided the total being received by the bloc countries from all sources does not exceed reasonable requirements.

Changes in the United Kingdom's licensing and other controls are reported in *Foreign Commerce Weekly*, published by the Bureau of Foreign Commerce.

A subscription for this magazine may be entered at $4.50 a year ($6 to foreign addresses) with the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., or through the nearest Department of Commerce Field Office. Remittance should accompany the order.

While there was a tightening up and many additions to the list in 1949 a considerable reduction in the number of strategic items controlled took place in 1954 as a result of discussions in Cocom. The United Kingdom's embargo list was reduced by one-third from about 260 to 170 items, and the quantitative control list was cut from 90 to 20. From May 1951 to May 1957 Britain also maintained in addition seperate embargo controls over strategic goods going to China. The export control list as it is today makes no distinction between China and Soviet bloc countries as destinations, however.

In addition to the goods controlled for strategic reasons, the export licensing list has always included a number of items in short supply in the United Kingdom. Although the list of goods subject to control for short supply reasons has diminished through the years to take account of the improved supply position, there is no indication from the present published list of the degree of control on the restricted goods, or whether the authorities discriminate between destinations since licenses are required for restricted exports going to any country.

There also is a limited list of goods controlled to prevent the flight of capital from the country, i. g., antiques, diamonds, furs, gold, works of art. These goods, as in the case of short supply items, require licenses whatever their destination.

Export Licensing and Exchange Controls

During World War II, the export control orders contained a list of countries to which the export of all goods required licenses. In 1945, the country schedule was abolished altogether, and goods specifically mentioned in the later export control orders were required to be licensed on being shipped to any country. Countries of destination were reinserted in the export control schedule in April 1949. At present, all goods subject to control are required to be licensed with the exception of some goods of potential military value which are exempt from licensing if they are shipped to the United States, Ireland, or the British Commonwealth.

Since the principal purpose of the export control mechanism is to control the exportation of goods which are in short supply or strategic, each license application for goods on the control list is considered on its own merits with due regard either to the supply position or the extent of the control on the item when it is to be exported to certain destinations.

The BOT is the agency of the British Government responsible for administering the export control regulations, and the British exporter applies for export licenses at the Board of Trade, Export Licensing Branch, Gavrelle House, 14 Bunhill Row, London, E.C.1. If a license is granted, the exporter must then comply with certain exchange control formalities. He must file an exchange control declaration with the British Treasury (through his local bank) for all shipments (licensed or not) exported to destinations outside the sterling area which are valued at £500 f. o. b. or over. In addition, he must show that payment for the goods, whatever their value, either has been made in an approved manner, or payment will be so made within 6 months from the date of export or some other period which the Treasury may specify. He must also show that the payment represents a satisfactory return for the goods.

United States Controls

Exports

At present all exports from the United States or its possessions to the United Kingdom are subject to the rules and regulations of the Bureau of Foreign Com-

merce, U. S. Department of Commerce, except for exports of arms, ammunition and implements of war, which are licensed by the U. S. Department of State; gold and narcotics, licensed by the U. S. Department of the Treasury; and certain source material and facilities for the production of fissionable material, licensed by the Atomic Energy Commission.

Department of Commerce export licenses fall into two categories—general and validated licenses. A general license is a privilege which permits exporters to make certain shipments without applying for or receiving a validated license document. The commodities subject to validated license requirements, as well as all other regulations concerning export control, are shown in the *Comprehensive Export Schedule*, which is available for examination at any Department of Commerce Field Office. The *Comprehensive Export Schedule* and supplementary *Current Export Bulletins* may be purchased from any Field Office or from the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D.C., at an annual subscription rate, beginning each March 31, of $[illegible] ($1.50 additional for foreign mailing). Airmail service on the supplementary bulletins is available, to domestic subscribers only, at an additional cost of $4 a year.

Additional information concerning export control requirements for shipments to the United Kingdom may be obtained direct from the Bureau of Foreign Commerce, U. S. Department of Commerce, Washington 25, D.C., or from any of the Department's Field Offices.

Imports

Information on United States import duties is obtainable from the Commissioner of Customs, U. S. Department of the Treasury, Washington 25, D.C., or from local collectors of customs.

With few exceptions, imports into the United States are free from control. Absolute import quota restrictions on commercial products are limited, for the most part, to certain farm products for which officially supported prices in the United States are provided by law. Information on import quotas on controlled dairy products, and on permits for imports of oats, rye, barley, and wheat for planting purposes, may be obtained from the Import Division, Foreign Agricultural Service, U. S. Department of Agriculture, Washington 25, D.C. Information regarding import quotas on sugar is furnished by the Sugar Division, Commodity Stabilization Service, U. S. Department of Agriculture. Information on other commodities subject to import quotas is available from the Bureau of Customs, U. S. Department of the Treasury.

For imports of arms, ammunition, and implements of war, an import license must be obtained from the Office of Munitions Control, U. S. Department of State, Washington 25, D.C.

Other Controls

The Treasury Department's Division of Foreign Assets Control, Washington 25, D.C., should be consulted for information on the foreign assets control regulations, which prohibit all unlicensed transactions directly or indirectly involving mainland Chinese or North Korean financing or trade. These regulations, among other things, specifically prohibit the unlicensed purchase in any foreign country of all goods of mainland Chinese origin and all goods of types which in the past were chiefly imported into the United States from Mainland China. The Division of Foreign Assets Control should also be consulted with respect to the transactions control regulations, which prohibit Americans from shipping strategic materials from any foreign country to a Soviet bloc country.

July 1958.

Prepared by Deane M. Black, British Commonwealth Division, Office of Economic Affairs, Bureau of Foreign Commerce Department of Commerce.

PLAINTIFF'S EXHIBIT NO. 105.

DURABLE CONSUMER GOODS

July 1959

Television Sets

Prepared by The Economist Intelligence Unit Limited in Association with The British Market Research Bureau Limited

• • •

Part II.

The Economics of Supply of Television Sets

• • •

1. *Structure of the Industry*

Since January of this year there have been further mergers in the industry. Philips Electrical Limited bought Cossor Radio and Television Limited, a subsidiary of A. C. Cossor Limited. Cossor is ceasing the manufacture of radio and television receivers and Philips will be able to use Cossor trade marks in all countries of the world with the exception of Canada and Pakistan.

Ultra Electric Limited increased its interests in the industry by acquiring the entire share capital of Pilot Radio Limited from the Pilot Radio Corporation of the U.S. It is not known, however, whether this will lead to any direct co-operation between Ultra and the American Corporation with which Pilot Radio has maintained close ties in the past. The Rank Organisation have acquired the Wharfedale Wireless Works in Bradford, manufacturers of loudspeaker systems.

Thus, the tendency to amalgamation of companies with the object of gaining the advantages of large scale opera-

tions and longer production runs, coupled with the need for increased resources in order to be able to undertake expenditure on research and new techniques, continued during the first half of 1959.

• • •

Relay television, where the two principal firms concerned are British Relay Wireless and Rediffusion, has been expanding at the rate of 100 per cent per annum and it is still regarded as having perhaps the greatest expansion potential of any sector of the industry.

• • •

4. *Trends in Production, Exports, Imports and Supply*

• • •

(iii) *Imports*

Imports of television sets are still not sufficiently important to be shown separately in the trade figures, and represent only a negligible addition to the total supply of sets to the U.K. market.

(iv) *Supply*

For the first time in the U.K., home sales of television sets topped the two million mark at 2,020,000 sets. This, with the exception of 1956, continues the unbroken rise in sales since 1947.

Home sales in the last quarter of 1958 were a record at 937,000 sets and were half as much again as those in the corresponding quarters of 1956 and 1957. Sales continued at a high level in the first quarter of 1959, and though seasonally down on the previous quarter's figures were 62.4 per cent higher than a year earlier. In April, the advance on 1958 was even more spectacular, and sales at 176,600 sets were 141.6 per cent greater than in the previous year.

Since the removal of restrictions on hire purchase trans-

actions last October, sales have been running at a much higher level than previously. This has shown itself by the growing divergence between the actual level of manufacturers' home sales and the calculated level based on the past relationship between sales of television sets and total expenditure on durable household goods. The number of television sets in use has, however, risen very sharply in recent years and the domestic market is approaching the point of saturation. Unless, therefore, some new factor, such as the introduction of colour television, stimulates a quicker replacement of existing sets, sales may well tend to fall back in the longer run.

PLAINTIFF'S EXHIBIT No. 106

THE ECONOMIST
May 30, 1959

• • •

Dollar Imports

SETTING THE CONSUMER FREE

The liberation of dollar imports announced on Thursday is a major and very welcome move. It is also an eminently logical one. Ever since the achievement of technical convertibility for sterling, there has been no lasting economic reason for discrimination between dollar imports and any other sorts of imports; it could therefore be regarded as a bit absurd that up to this week quota restrictions were still maintained on 27 per cent of our imports from the dollar area (including virtually all consumer goods), while only 5 per cent of our imports from most non-dollar countries (other than the Soviet block and Japan) were so restricted, and all our imports from the sterling area were quota-free. But the British consumer has been cut off from an opportunity to

buy American domestic appliances and other consumer goods for nearly twenty years; nobody can be quite sure how excitedly he will rear when he smells some of the oats of freedom, and it was not expected that the Government would have the courage to make a nearly clean sweep of discrimination at one swoop.

• • •

MORE IMPORTS FREED.

The latest move towards liberalising imports from the dollar area falls into three parts. The first frees from next Monday imports of a wide range of mainly consumer goods which already enter freely from Western Europe. They include:

Domestic appliances, radio, television and radar apparatus

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PLAINTIFF'S EXHIBIT No. 107.

Oversea Trade Statistics

Imports Cleared for Home Consumption

1954-55

Classified according to individual items of the Customs Tariff

Part 2:—Tariff Items 250A to "Unspecified"

Prepared Under Instructions from the Right Honorable

The Treasurer

By

S. R. Carver

Acting Commonwealth Statistician

IMPORTS CLEARED FOR HOME CONSUMPTION: 1954-1955

Nature of Tariff (Preferences):—

Code: Normal Admission: 1. U.K., 2. N.Z., 3. Can., 4. Other Preferential, 5. M.F.N., 6. General By-Law Admission (Tariff Item 449): 7. Preferential, 8. M.F.N., 9. General.

Type: Cleared under Tariff Item quoted, at rates applicable thereto, viz:—A. Ad valorem (or Free); F. Fixed (or Specific); C. Composite; ED Extra Duty.

Classified under Tariff Item quoted, but cleared under Tariff Item 449 at rates applicable thereto, viz.:—X: 449 (A) (1) all countries or 449 (A) (2) B.P.T. only; Y. 449 (A) (2), M.F.N. or General; Z. 449 (b).

Tariff Item	Statistical Item	Country of Origin	Nature of Tariff Code	Nature of Tariff Type	Quantity	Value £A F.O.B.	Duty £A
370	A	Articles imported by or being the property of the Commonwealth, not being for the purposes of trade					
		• • •					
		Communication equipment—					
5261		Sets, excluding cabinets, valves, etc.					
		U.K.	1	A		17,309	—
		Norfolk Is.	4	A		300	—
		Canada	3	A		201,290	—
		Aust. (re-imp.)	5	A		247	—
		Netherlands	5	A		340	—
		U.S.A.	5	A		26,720	—
		Origin Unknown	6	A		250	—
						236,456	—
		• • •					

PLAINTIFF'S EXHIBIT No. 108.

Oversea Trade Statistics

Imports Cleared for Home Consumption

1955-56

Classified according to individual items of the Customs Tariff
Part 2:—Tariff Items 250A to "Unspecified"
Prepared Under Instructions from the Right Honorable
The Treasurer
By
S. R. Carver
Acting Commonwealth Statistician

Imports Cleared for Home Consumption—1955-56
Classified according to individual items of the Customs Tariff

Foreword

1. This publication has been prepared by the Commonwealth Bureau of Census and Statistics in order to meet an urgent demand for advance statistics in respect of goods cleared for home consumption classified according to the items incorporated in the Schedule to the Customs Tariff.
2. The statistics embrace clearances from the ship's side and from bonded warehouse. Statistics of imports classified according to Statistical Items will as usual be published in the printed Oversea Trade Bulletin.

• • •

4. Under each Tariff Item description is listed the Statistical Item or Items to which the revelant goods are classified for statistical purposes. In cases where only one Statistical Item is included under a Tariff Item no additional description is shown. In all other cases a brief description of each of the component Statistical Items is shown, which should be read in conjunction with the Tariff Item description.

5. For a detailed description of the goods covered by the various Tariff Items reference should be made to the Schedule to the Customs Tariff. For a detailed description of the Statistical Items under which the clearances are recorded reference should be made to the Statistical Classification of Imports.
6. For Tariff Items which include more than one Statistical Item, sub-totals of quantity and value are given for each Statistical Item shown; total value of all goods cleared under the Tariff Item is shown immediately beneath the last Statistical Item sub-total.

• • •

9. "Value" is the declared Value for Duty, expressed in terms of Australian currency.
10. "Duty" represents the gross amount of Customs Tariff duty collected, expressed in Australian currency. It does not include primage duty or sales tax.

• • •

Bureau of Census and Statistics
Canberra. A.C.T. October, 1956.

IMPORTS CLEARED FOR HOME CONSUMPTION:—
1955-1956

Nature of Tariff (Preferences):—

Code: Normal Admission: 1. U.K., 2. N.Z., 3. Can., 4. Other Preferential, 5 M.F.N., 6. General • • •.

Type: Cleared under Tariff Item quoted, at rates applicable thereto, viz:—A. Ad valorem (or free); F. Fixed (or Specific); C. Composite; ED Extra Duty.

Classified under Tariff Item quoted, but cleared under Tariff Item 449 at rates applicable thereto, viz.:—X. 449 (A)(1) and 449 C1 all countries or 449 A2 and 449 C2 B.P.T. only; Y. 449 A2 and 449 C2 M.F.N. or General; Z. 449(B).

Tariff Item	Statistical Item	Country of Origin	Nature of Tariff Code	Nature of Tariff Type	Quantity	Value £A F.O.B.	Duty £A
370 A		Articles imported by or being the property of the Commonwealth, not being for the purposes of trade					—
		• • •					
		Communication Equipment—					
5261		Sets, excluding cabinets, valves, etc.					
		U.K.	1	A		21,547	—
		Aust. (Re-imp.)	4	A		57	—
		Germany, F.R.	5	A		1,465	—
		Netherlands	5	A		203	—
		U.S.A.	5	A		108,345	—
						131,617	—
		• • •					

PLAINTIFF'S EXHIBIT No. 109.

Oversea Trade Statistics

Imports Cleared for Home Consumption

1956-57

Classified according to individual items of the Customs Tariff

Part 2:—Tariff Items 250A to "Unspecified"

Prepared Under Instructions from the Right Honorable The Treasurer

By

S. R. Carver

Commonwealth Statistician

Imports Cleared for Home Consumption—1956-57
Classified according to individual items of the Customs Tariff

Foreword

1. This publication has been prepared by the Commonwealth Bureau of Census and Statistics in order to meet an urgent demand for advance statistics in respect of goods cleared for home consumption clas-

sified according to the items incorporated in the Schedule to the Customs Tariff.

2. The statistics embrace clearances from the ship's side and from bonded warehouse. Statistics of imports classified according to Statistical Items will as usual be published in the printed Oversea Trade Bulletin.

• • •

4. Under each Tariff Item description is listed the Statistical Item or Items to which the relevant goods are classified for statistical purposes. In cases where only one Statistical Item is included under a Tariff Item no additional description is shown. In all other cases a brief description of each of the component Statistical Items is shown, which should be read in conjunction with the Tariff Item description.
5. For a detailed description of the goods covered by the various Tariff Items reference should be made to the Schedule to the Customs Tariff. For a detailed description of the Statistical Items under which the clearances are recorded reference should be made to the Statistical Classification of Imports.
6. For Tariff Items which include more than one Statistical Item, sub-totals of quantity and value are given for each Statistical Item shown; total value of all goods cleared under the Tariff Item is shown immediately beneath the last Statistical Item sub-total.

• • •

8. In order to extract details of total clearances of goods which have been classified to a particular Statistical Item it is necessary first to ascertain the Tariff Items under which the goods are usually cleared. This information is obtainable from the Official Tariff Guide issued by Department of Trade and Customs

or from the Statistical Classification of Imports. An index to the latter appears in the preliminary Oversea Trade Bulletin 1956-57 published by the Bureau in September, 1957. It should be noted, however, that in addition to the particular Tariff Items shown in the Statistical Classification of Imports, specified goods may be cleared under Tariff Items 370, 371, 372 and 373 which cover clearances of goods for the Commonwealth Government, the Governor-General and staff, State Governors and staff and Diplomatic, etc. Representatives and Staff.

9. "Value" is the declared Value for Duty, expressed in terms of Australian currency.

10. "Duty" represents the gross amount of Customs Tariff duty collected, expressed in Australian currency. It does not include primage duty or sales tax.

• • •

Bureau of Census and Statistics
Canberra, A.C.T. November, 1957

IMPORTS CLEARED FOR HOME CONSUMPTION: 1956-57

Nature of Tariff (Preferences):—

Code: Normal Admission: 1. U.K., 2. N.Z., 3. Can., 4. Other Preferential, 5 M.F.N., 6. General • • •

Type: Cleared under Tariff Item quoted, at rates applicable thereto, viz.:—A. Ad valorem (or Free); F. Fixed (or Specific); C. Composite; ED Extra Duty

Classified under Tariff Item quoted, but cleared under Tariff Item 449 at rates applicable thereto, viz:—X. 449 A(1) and 449 C1 all countries or 449 A2 and 449 C2 B.P.T. only; Y. 449 A2 and 449 C2 M.F.N. or General; Z. 449 (B)

Tariff Item	Statistical Item	Country of Origin	Nature of Tariff Code	Type	Quantity	Value £A F.O.B.	Duty £A
370 A		Articles imported by or being the property of the Commonwealth, not being for the purposes of trade					
		• • •					
	5249	Arc lamps, including arc and incandescent combined, other than for projection purposes					
					No.		
		U.K.	1	A	8	64	—
		U.S.A.	5	A	1	444	—
					9	508	—
		ommunication equipment—					
	5263	Sets, excluding cabinets, valves, etc.					
					No.		
		U.K.	1	A	156	25,304	—
		Germany, F.R.	5	A	1	475	—
		U.S.A.	5	A	12	3,626	—
					169	29,405	—
	5265	Wireless transmitting sets, etc.					
					No.		
		U.K.	1	A	743	293,760	—
		Aust. (re-imp.)	4	A	25	5,135	—
		Denmark	5	A	1	124	—
		Germany, F.R.	5	A	—	1,183	—
		U.S.A.	5	A	97	16,150	—
		Unknown	6	A	45	1,360	—
					911	317,712	—
	5270	Parts of wireless receivers and accessories (not valves)					
		U.K.	1	A	—	329,214	—
		New Guinea	4	A		12	—
		Papua	4	A		41	—
		Cocos I.	4	A		365	—
		Canada	3	A		154	—
		N.Z.	2	A		2,400	—
		Aust. (re-imp.)	4	A		6,894	—
		Denmark	5	A		492	—
		• • •					

PLAINTIFF'S EXHIBIT No. 110.

Oversea Trade Statistics

Imports Cleared for Home Consumption

1957-58

Classified according to individual items of the Customs Tariff
Part 2:—Tariff Items 250A to "Unspecified"

Prepared Under Instructions from the Right Honorable
The Treasurer
By
S. R. Carver
Commonwealth Statistician

Imports Cleared for Home Consumption—1957-58

Classified according to individual items of the Customs Tariff

Foreword

1. This publication has been prepared by the Commonwealth Bureau of Census and Statistics in order to meet a demand for statistics in respect of goods cleared for home consumption classified according to the items incorporated in the Schedule to the Customs Tariff.
2. The statistics embrace clearances from the ship's side and from bonded warehouse. Statistics of imports classified according to Statistical Items have been published in Bulletin No. 55 "Oversea Trade 1957-58."

• • •

5. Under each Tariff Item description is listed the Statistical Item or Items to which the relevant goods are classified for statistical purposes. In cases where only one Statistical Item is included under a Tariff Item no additional description is shown. In all other cases a brief description of each of the component

Statistical Items is shown, which should be read in conjunction with the Tariff Item description.

• • •

7. For Tariff Items which include more than one Statistical Item, sub-totals of quantity and value are given for each Statistical Item shown; total value of all goods cleared under the Tariff Item is shown immediately beneath the last Statistical Item sub-total.
8. In order to extract details of total clearances of goods which have been classified to a particular Statistical Item it is necessary first to ascertain the Tariff Items under which the goods are usually cleared. This information is obtainable from the Official Tariff Guide issued by the Department of Customs and Excise or from the Statistical Classification of Imports. An index to the latter appears on pages 587 to 597 of Bulletin No. 55 "Oversea Trade 1957-58" published by the Bureau in December, 1958. It should be noted, however, that in addition to the particular Tariff Items shown in the Statistical Classification of Imports, specified goods may be cleared under Tariff Items 370, 371, 372 and 373 which cover clearances of goods for the Commonwealth Government, the Governor-General and staff, State Governors and staff and Diplomatic, etc. Representatives and Staff.
9. "Value" is the declared Value for Duty, expressed in terms of Australian currency.
10. "Duty" represents the gross amount of Customs Tariff duty collected, expressed in Australian currency. It does not include primage duty or sales tax.

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Bureau of Census and Statistics
Canberra, A.C.T. April, 1959.

IMPORTS CLEARED FOR HOME CONSUMPTION: 1957-58

Tariff Item Stat. Item	Item and Country of Origin	Quantity	Value £A F.Q.B.	Duty £A
370 A	Articles imported by or being the property of the Commonwealth, not being for the purposes of trade			
	Communication Equipment			
5262	Television Sets			
		No.		
	United Kingdom	1	10	445
5263	Other Receiving Sets			
		No.		
	United Kingdom	1	196	25790
	Aust. Re-import	1	10	355
			206	26154
5265	Wireless Transmitting Sets Etc.			
		No.		
	United Kingdom	1	230	119658
	Aust. Re-import	1	61	10400
	U.S.A.	1	21	22302

PLAINTIFF'S EXHIBIT No. 111.

Oversea Trade Statistics

Imports Cleared for Home Consumption

1958-59

Classified according to individual items of the Customs Tariff

Part 2:—Tariff Items 250A to "Unspecified"

Prepared Under Instructions from the Right Honorable The Treasurer

By

S. R. Carver

Commonwealth Statistician

Imports Cleared for Home Consumption 1958-59

Classified according to Individual Items of the Customs Tariff

Preface

1. This publication has been prepared in the Commonwealth Bureau of Census and Statistics in order to meet a demand for statistics in respect of goods cleared for home consumption classified according to the items incorporated in the Schedule to the Customs Tariff.

2. *Coverage*—The statistics embrace clearances from the ships' sides and from bonded warehouses. Imports on Government account are treated as normal transactions and are an integral part of oversea trade statistics. Notes and coins are included in the clearances at their commodity value. Passengers' effects are included under Tariff Item 409. Particulars of direct transit trade through Australia are not included.

3. *Presentation of Data*—

• • •

For Tariff Items which include more than one statistical item sub-totals of quantity and value are given for each statistical item shown; total value of all goods cleared under the Tariff Item is shown immediately beneath the last statistical item sub-total.

Under each Tariff Item description is listed the statistical item or items to which the relevant goods are classified for statistical purposes. In cases where only one statistical item is included under a Tariff Item no additional description is shown. In all other cases a brief description of each of the component statistical items is shown, which should be read in conjunction with the Tariff Item description.

Imports cleared for home consumption have been arranged in this Bulletin in ascending order of Customs Tariff Item and show:

(a) Tariff Item number and brief description.
(b) Statistical item number and brief description.

(c) Country of origin.
(d) Nature of Tariff.
(e) Rate of duty.
(f) Quantity, where applicable.
(g) Value for duty.
(h) Amount of duty.

In order to extract details of total clearances of goods which have been classified to a particular Statistical Item it is necessary first to ascertain the Tariff Items under which the goods are usually cleared. This information is obtainable from the Official Tariff Guide issued by the Department of Customs and Excise or from the Statistical Classification of Imports. An index to the latter appears on pages 603 to 613 of Bulletin No. 56 "Oversea Trade 1958-59" published by the Bureau in December, 1959. It should be noted, however, that in addition to the particular Tariff Items shown in the Statistical Classification of Imports, specified goods may be cleared under Tariff Items 370, 371, 372 and 373 which cover clearances of goods for the Commonwealth Government, the Governor-General and staff, State Governors and staff and Diplomatic, etc. Representatives and Staff.

4. *Country of Origin.*—Country of origin is defined as the country in which the goods were given the form in which they were finally imported into Australia, ignoring minor transformations such as packaging etc.

* * *

7. *Quantities.*—Where quantities are shown they are generally but not invariably expressed in terms of the normal trade unit. Quantities are not tabulated in respect of statistical items for which there is no appropriate unit of quanity (for example those statistical items which cover a number of commodities and cannot be recorded under a uniform unit of quantity).

Unless provision is made for a separate statistical item for "parts" clearances of "parts" of articles are recorded under the same statistical item as the complete unit. In such cases, if quantities for the items are tabulated, the quantity/value relationship may be distorted as the quantity represents the number of complete units whereas the value includes, in addition, the value of parts.

8. *Value for Duty.*— The value shown represents the amount on which duty is payable or would be payable if this duty were ad valorem. Section 154(1) of the Customs Act 1901-1959 provides that when any duty is imposed according to value, the value for duty shall be the sum of the following—

(a) (i) The actual money price paid or to be paid for the goods by the Australian importer plus any special deduction; or

(ii) The current domestic value of the goods, whichever is the higher.

(b) All charges payable or ordinarily payable for placing the goods free on board at the port of export.

"Current domestic value" is defined as "the amount for which the seller of the goods to the purchaser in Australia is selling or would be prepared to sell for cash at the date of exportation of these goods, the same quantity of identically similar goods, to any and every purchaser in the country of export for consumption in that country."

• • •

9. *Duty.*— Duty represents the gross amount of Customs Tariff duty collected expressed in Australian currency. It does not include primage duty or sales tax.

• • •

Bureau of Census and Statistics
Canberra, A.C.T. January, 1960.

IMPORTS CLEARED FOR HOME CONSUMPTION, 1958-59

Tariff Item Stat. Item	Item and Country of Origin	Rate of Duty (Code)	Quantity	Value £A F.O.B.	Duty £A
370 A	Articles imported by or being the property of the Commonwealth, not being for the purposes of trade				
5257	Arc Lamps, except for cinematograph projection purposes				
			No.		
	U.K.	1 000	229	1414	
	Belgium-Lux	1 000	26	243	
	France	1 000	1	12	
	Germany, F.	1 000	3	5	
	Netherlands	1 000	6	61	
			265	1735	
5263	Wireless Receiving Sets—except Television				
			No.		
	U.K.	1 000	232	72780	
	New Zealand	1 000	1	51	
	Aust. Re-imp.	1 000	5	315	
	U. S. A.	1 000	14	4997	
			252	78143	
5265	Wireless Transmitting Sets, etc.				
			No.		
	U.K.	1 000	33	77156	
	Aust. Re-imp.	1 000	4	775	
	Germany, F.	1 000	1	815	
	U. S. A.	1 000	77	11493	
			115	909239	

ZENITH CROSS-CLAIMANT EXHIBIT NO. 4.

IMPORTS INTO AUSTRALIA, 1953-54.

Table III.

Article and Country of Origin.	Quantity.	Value.
CLASS XII.—(b) Dynamo Electrical Machinery, &c.		
Electric lamps and arc lamps—*continued.*		
• • •		
Wireless (radio) equipment.		
5261 Receiving sets, excluding cabinets, valves, loud-speakers, headphones, batteries, or any device for eliminating batteries.		£
United Kingdom		39,257
Other British Countries		2,903
Foreign Countries		7,663
Importing States—		
New South Wales		30,444
Victoria		14,441
Queensland		994
South Australia		743
Western Australia		3,060
Tasmania		59
Northern Territory		82
Total		49,823
Previous Year		44,442
• • •		

IMPORTS INTO AUSTRALIA, 1954-55.

Table III.

Article and Country of Origin.	Quantity.	Value.
CLASS XII.—(b) Dynamo Electrical Machinery, &c.		
Electric lamps and arc lamps—*continued.*		
• • •		
Wireless (radio) equipment.		
5261 Receiving sets, excluding cabinets, valves, loud-speakers, headphones, batteries, or any device for eliminating batteries.		£
United Kingdom		43,314
Canada		201,421
Other British Countries		2,162
United States of America		29,538
Other Foreign Countries		8,737
Importing States—		
New South Wales		264,106
Victoria		15,734
Queensland		412
South Australia		1,497
Western Australia		3,335
Tasmania		88
Total		285,172
Previous Year		49,823
• • •		

IMPORTS INTO AUSTRALIA, 1955-56.

Table III.

	Article and Country of Origin.	Quantity.	Value.
	CLASS XII. — (b) Dynamo Electrical Machinery, &c.		
	Electric lamps, &c.—*continued.*		
	Wireless (radio) equipment.		
5261	Receiving sets, excluding cabinets, valves, loud-speakers, headphones, batteries, or any device for eliminating batteries.		£
	United Kingdom		107,552
	Other British Countries		1,211
	Germany, Federal Republic of		15,199
	United States of America		110,074
	Other Foreign Countries		1,982
	Importing States—		
	New South Wales		165,266
	Victoria		49,818
	Queensland		900
	South Australia		700
	Western Australia		19,327
	Tasmania		5
	Northern Territory		2
	Total		236,018
	Previous Year		285,172

IMPORTS INTO AUSTRALIA, 1956-57.

Table III.

	Article and Country of Origin.	Quantity.	Value.
	CLASS XII. — (b) Dynamo Electrical Machinery, &c.		
	Electric lamps, &c.—continued.		
	• • •		
	Wireless (radio) equipment.		
	Receiving sets, excluding cabinets, valves, loud-speakers, headphones, batteries, or any device for eliminating batteries.		
5262	Television sets.	No.	£
	United Kingdom	5,048	169,842
	Other Commonwealth Countries	6	395
	Germany, Federal Republic of .	1,323	41,326
	Other Foreign Countries	116	2,193
	Importing States—		
	New South Wales	2,550	76,344
	Victoria	3,619	127,046
	South Australia	324	10,366
	Total	6,493	213,756
	Previous Year	Included in item 5263.	
5263	Other.	No.	£
	United Kingdom	5,143	42,394
	Other Commonwealth Countries	18	166
	Japan	679	6,371
	Other Foreign Countries	367	10,201
	Importing States—		
	New South Wales	5,161	34,330
	Victoria	882	20,378
	Queensland	19	610
	South Australia	60	1,017
	Western Australia	84	2,757
	Tasmania	1	40
	Total	6,207	59,132
	Previous Year(c)	Not available	236,018

• • •

(c) Includes item 5262.

IMPORTS INTO AUSTRALIA, 1957-58.

Table III.

	Article and Country of Origin.	Quantity.	Value.
	CLASS XII.—(b) Dynamo Electrical Machinery, &c.		
	Electric lamps, &c.—continued.		
	• • •		
	Wireless (radio and TV) equipment.		
	Receiving sets, excluding cabinets, valves, loud-speakers, headphones, batteries, or any device for eliminating batteries.		
5262	Television sets.	No.	£
	United Kingdom	4,515	146,917
	Australia (re-imported)	1	300
	Germany, Federal Republic of	964	33,299
	Other Foreign Countries	123	2,058
	• • •		
	Total	5,603	182,574
	Previous Year	6,493	213,756
5263	Other.	No.	£
	United Kingdom	12,852	62,063
	Other Commonwealth Countries	96	3,028
	Denmark	6,772	24,500
	Germany, Federal Republic of	515	8,037
	Japan	15,026	94,213
	Netherlands	2,844	29,762
	United States of America	459	9,251
	Other Foreign Countries	33	614
	• • •		
	Total	38,597	231,468
	Previous Year	6,207	59,132
	• • •		

IMPORTS INTO AUSTRALIA, 1958-59.

Table III.

	Article and Country of Origin.	Quantity.	Value.
	CLASS XII. — (b) Dynamo Electrical Machinery, &c.		
	Electric lamps, &c.—continued.		
	Wireless (radio and TV) equipment.		
	Receiving sets, excluding cabinets, valves, loud-speakers, headphones, batteries, or any device for eliminating batteries.		
5262	Television Sets.	No.	£
	Commonwealth Countries	124	1,623
	Germany, Federal Republic of..	1,366	52,383
	Other Foreign Countries	89	2,572
	Importing States—		
	New South Wales	1,271	46,081
	Victoria	303	10,372
	Queensland	1	23
	South Australia	3	92
	Western Australia	1	10
	Total	1,579	56,578
	Previous Year	5,603	182,574
5263	Other.	No.	£
	United Kingdom	22,426	118,060
	Other Commonwealth Countries.	29	886
	Germany, Federal Republic of..	3,801	17,774
	Japan	60,220	247,944
	Netherlands	3,263	37,358
	United States of America	893	23,554
	Other Foreign Countries	321	3,401
	Importing States—		
	New South Wales	61,932	242,455
	Victoria	21,250	145,783
	Queensland	2,606	14,963
	South Australia	3,510	33,241
	Western Australia	1,524	11,683
	Tasmania	131	852
	Total	90,953	448,977
	Previous Year	38,597	231,468

IMPORTS INTO AUSTRALIA, 1959-60.

Table III.

Article and Country of Origin.	Quantity.	Value.
CLASS XII. — (b) Dynamo Electrical Machinery, &c.		
• • •		
Wireless (radio and TV) equipment.		
52620 Receiving sets, excluding cabinets, valves, loud-speakers, headphones, batteries, or any device for eliminating batteries—Television sets.(a)	No.	£
United Kingdom	49	1,255
Germany, Federal Republic of..	506	18,276
Other Foreign Countries	60	2,722
• • •		
Total(a)	615	22,253
Previous Year	1,579	56,578
52621 Television receivers, designed for the reception of signals without line connexion, including cabinets, valves, loud-speakers, headphones etc.(b)	No.	£
United Kingdom	3	139
Germany, Federal Republic of..	79	4,070
Other Foreign Countries	32	861
• • •		
Total(c)	114	5,070
Previous Year	(b)	

(a) See also item 52621.

(a) To 19. 5.60
(b) See also item 52620
(c) From 20. 5.60

IMPORTS INTO AUSTRALIA, 1959-60.

Table III.

	Article and Country of Origin.	Quantity.	Value.
	CLASS XII. — (b) Dynamo Electrical Machinery, &c.		
	Wireless, &c.—continued.		
52631	Radio Broadcast receiving sets, excluding cabinets, valves, loud-speakers, headphones, batteries, or any device for eliminating batteries—Transistor sets (sets wholly or partly transistorized). (d)	No.	£
	United Kingdom	2,195	12,460
	New Zealand	5,010	32,764
	Other Commonwealth Countries	595	3,711
	Austria	710	5,527
	Japan	69,079	330,050
	Netherlands	1,957	21,866
	Other Foreign Countries	1,088	9,319
	Total(a)	80,634	415,697
	Previous Year	Included in item 52639.	
	Radio broadcast receivers including cabinets, valves, loud-speakers, headphones, etc.		
52632	Incorporating transistors(e).	No.	£
	United Kingdom	2,138	24,085
	Hong Kong	1	10
	Japan	1,392	11,836
	Netherlands	326	5,798
	Other Foreign Countries	144	3,583
	Total(c)	4,001	45,312
	Previous Year	(e)	

(a) To 19. 5.60
(c) From 20. 5.60
(d) See also item 52632
(e) See also item 52639

IMPORTS INTO AUSTRALIA, 1959-60.

Table III.

	Article and Country of Origin.	Quantity.	Value.
CLASS XII. — (b) Dynamo Electrical Machinery, &c. Wireless, &c.—continued.			
52637	Valve (only) operated(f).	No.	£
	United Kingdom	57	1,040
	Germany, Federal Republic of..	100	4,058
	Other Foreign Countries	18	261
	Total(c)	175	5,359
	Previous Year		(f)
52638	Other, including crystal sets(f).	No.	£
	Total(c)	2	164
	Previous Year		(f)
52639	Receiving sets excluding cabinets, valves, loud-speakers, head-phones, batteries, or any device for eliminating batteries —other(g).	No.	£
	United Kingdom	24,629	196,841
	Other Commonwealth Countries.	18	537
	Germany, Federal Republic of..	365	5,725
	Japan	13,520	14,879
	United States of America	740	17,459
	Other Foreign Countries	53	1,441
	Total(a)	39,325	236,882
	Previous Year(e)	90,953	448,977

(a) To 19. 5.60.
(c) From 20. 5.60.
(e) See also item 52631.
(f) See also item 52639.
(g) See also items 52637 and 52638.

IMPORTS INTO AUSTRALIA, 1960-61.

Table III.

	Article and Country of Origin.	Quantity.	Value.
	CLASS XII. — (b) Dynamo Electrical Machinery, &c.		
	Communication equipment—continued.		
	• • •		
	RADIO TELEGRAPHIC AND TELEPHONIC APPARATUS, RADIO BROADCASTING AND TELEVISION APPARATUS (INCLUDING THOSE INCORPORATING GRAMOPHONES) AND TELEVISION CAMERAS.		
	• • •		
52710	Television receivers designed for the reception of signals without line connection, with or without radio broadcast receivers and sound recorders and reproducers.	No.	£
	Commonwealth Countries	23	1,578
	Germany, Federal Republic of..	338	20,065
	United States of America	53	8,342
	Other Foreign Countries	40	2,464
	• • •		
	Total	454	32,449
	Previous Year	729	27,323
	Radio broadcast receivers with or without sound recorders or reproducers.		
52721	Incorporating transistors.	No.	£
	United Kingdom	2,185	27,918
	Other Commonwealth Countries.	66	753
	Germany, Federal Republic of..	695	14,044
	Japan	21,347	188,449
	Netherlands	5,909	83,441
	United States of America	99	6,033
	Other Foreign Countries	33	355
	• • •		
	Total	30,334	320,993
	Previous Year	84,635	461,009

IMPORTS INTO AUSTRALIA, 1960-61.

Table III.

	Article and Country of Origin.	Quantity.	Value.
CLASS XII.—(b) Dynamo Electrical Machinery, &c.			
	Communication equipment—continued.		
	Radio telegraphic, etc—continued.		
	Radio broadcast receivers, etc.—continued.		
52722	Valve (only) operated.	No.	£
	United Kingdom	362	158,677
	Other Commonwealth Countries.	10	478
	Germany, Federal Republic of.	722	29,396
	Japan	801	6,367
	Netherlands	471	39,581
	United States of America	157	144,611
	Other Foreign Countries	18	1,089
	Total	2,541	380,199
	Previous Year(b)	39,502	242,405
52723	Other, including crystal sets.	No.	£
	United Kingdom	29	8,058
	Other Commonwealth Countries.	1	125
	Japan	18,558	8,919
	Other Foreign Countries	119	5,132
	Total	18,707	22,234
	Previous Year	Included in item 52722.	

(b) Includes item 52723

IMPORTS INTO AUSTRALIA, 1961-62.

Table III.

Article and Country of Origin.	Quantity.	Value.
CLASS XII. — (b) Dynamo Electrical Machinery, &c. Communication equipment—continued.		
RADIO TELEGRAPHIC AND TELEPHONIC APPARATUS, RADIO BROADCASTING AND TELEVISION APPARATUS (INCLUDING THOSE INCORPORATING GRAMOPHONES) AND TELEVISION CAMERAS.		
52710 Television receivers designed for the reception of signals without line connection, with or without radio broadcast receivers and sound recorders and reproducers.	No.	£
Commonwealth Countries	10	541
Germany, Federal Republic of..	27	7,625
Other Foreign Countries	38	1,663
Total	75	9,829
Previous Year	454	32,449
Radio broadcast receivers with or without sound recorders or reproducers.		
52721 Incorporating transistors.	No.	£
Commonwealth Countries	218	3,046
Germany, Federal Republic of..	693	17,389
Japan	32,098	282,012
Netherlands	752	12,472
Other Foreign Countries	116	2,487
Total	33,877	317,406
Previous Year	30,334	320,993

IMPORTS INTO AUSTRALIA, 1961-62.

Table III.

	Article and Country of Origin.	Quantity.	Value.
	CLASS XII. — (b) Dynamo Electrical Machinery, &c.		
	Communication equipment—continued.		
	Radio telegraphic, etc.—continued.		
	Radio broadcast receivers, etc.—continued.		
52722	Valve (only) operated.	No.	£
	Commonwealth Countries	143	4,161
	Germany, Federal Republic of ..	455	18,167
	Japan	1,965	29,086
	United States of America	61	6,098
	Other Foreign Countries	21	1,254
	• • •		
	Total	2,645	58,766
	Previous Year	2,541	380,199
52723	Other, including crystal sets.	No.	£
	Commonwealth Countries	60	1,254
	Japan	43,215	17,600
	Other Foreign Countries	1,158	2,408
	• • •		
	Total	44,433	21,262
	Previous Year	18,707	22,234
	• • •		

IMPORTS INTO AUSTRALIA, 1962-63.

Table III.

	Article and Country of Origin.	Quantity.	Value.
	CLASS XII.—(B) Dynamo Electrical Machinery, &c.		
	Communication equipment—continued.		
	• • •		
	RADIO TELEGRAPHIC AND TELEPHONIC APPARATUS, RADIO BROADCASTING AND TELEVISION APPARATUS (INCLUDING THOSE INCORPORATING GRAMOPHONES) AND TELEVISION CAMERAS.		
	• • •		
52710	Television receivers designed for the reception of signals without line connection, with or without radio broadcast receivers and sound recorders and reproducers.	No.	£
	Commonwealth Countries	14	602
	Germany, Federal Republic of..	48	7,588
	Japan	413	12,498
	Other Foreign Countries	233	3,649
	• • •		
	Total	708	24,337
	Previous Year	75	9,829
	• • •		
	Radio broadcast receivers with or without sound recorders or reproducers.		
52721	Incorporating transistors.	No.	£
	Hong Kong	457	5,129
	Other Commonwealth Countries.	116	3,171
	Germany, Federal Republic of..	651	17,512
	Japan	75,471	528,273
	United States of America	133	11,469
	Other Foreign Countries	377	5,471
	• • •		
	Total	77,205	571,025
	Previous Year	33,877	317,406

IMPORTS INTO AUSTRALIA, 1962-63.

Table III.

	Article and Country of Origin.	Quantity.	Value.
	CLASS XII.—(B) Dynamo Electrical Machinery, &c.		
	Communication equipment—continued.		
	Radio telegraphic, etc.—continued.		
	Radio broadcast receivers, etc.—continued.		
52722	Valve (only) operated.	No.	£
	United Kingdom	59	8,436
	Other Commonwealth Countries	11	802
	Germany, Federal Republic of	664	25,789
	Japan	676	10,505
	Netherlands	262	7,987
	United States of America	99	15,532
	Other Foreign Countries	60	1,790
	Total	1,831	70,841
	Previous Year	2,645	58,766
52723	Other, including crystal sets.	No.	£
	Commonwealth Countries	15	3,713
	Japan	81,044	25,917
	Other Foreign Countries	104	2,760
	Total	81,163	32,390
	Previous Year	44,433	21,262

IMPORTS INTO AUSTRALIA, 1963-64.

Table III.

Article and Country of Origin.	Quantity.	Value.
CLASS XII.—(B) Dynamo Electrical Machinery, &c.		
Communication equipment, &c.—continued.		
RADIO TELEGRAPHIC AND TELEPHONIC APPARATUS, RADIO BROADCASTING AND TELEVISION APPARATUS (INCLUDING THOSE INCORPORATING GRAMOPHONES) AND TELEVISION CAMERAS.		
52710 Television receivers designed for the reception of signals without line connection, with or without radio broadcast receivers and sound recorders and reproducers.	No.	£
Commonwealth Countries	30	4,348
France	2	7,221
Japan	2,773	80,177
United States of America	35	12,342
Other Foreign Countries	14	1,105
Total	2,854	105,193
Previous Year	708	24,337
Radio broadcast receivers with or without sound recorders or reproducers.		
52721 Incorporating transistors.	No.	£
United Kingdom	69	5,002
Hong Kong	2,610	8,758
New Zealand	807	10,500
Other Commonwealth Countries.	14	181
Germany, Federal Republic of..	419	5,918
Japan	121,518	739,716
Netherlands	1,443	28,636
United States of America	620	22,109
Other Foreign Countries	710	3,523
Total	128,210	824,343
Previous Year	77,205	571,025

IMPORTS INTO AUSTRALIA, 1963-64.

Table III.

	Article and Country of Origin.	Quantity.	Value.
	CLASS XII.—(B) Dynamo Electrical Machinery, &c.		
	Communication equipment, &c.—continued.		
	Radio Telegraphic, etc.—continued.		
52722	Valve (only) operated.	No.	£
	United Kingdom	76	16,424
	Other Commonwealth Countries	56	4,187
	Germany, Federal Republic of	1,122	42,251
	United States of America	178	36,673
	Other Foreign Countries	320	5,189
	Total	1,752	104,724
	Previous Year	1,831	70,841
52723	Other, including crystal sets.	No.	£
	Commonwealth Countries	15	874
	Japan	89,008	25,618
	Other Foreign Countries	222	4,914
	Total	89,245	31,406
	Previous Year	81,163	32,390

ZENITH CROSS-CLAIMANT EXHIBIT NO. 8

OVERSEA TRADE, 1953-54

Preface.

Source of Data.— These statistics of Australia's Trade with Other Countries, and of Customs and Excise Revenue, for the year ended 30th June, 1954, together with comparative figures for previous years in abridged form, have been compiled from documents obtained under the Customs Act and supplied to this Bureau by the Department of Trade and Customs.

• • •

The Trade System.— There are two generally accepted systems of recording oversea trade statistics, namely, (a) special trade and (b) general trade. The Statistical Office of the United Nations defines the two systems as follows:—

• • •

(b) *General Trade.* General imports are the combined total of imports directly for domestic consumption and imports into bonded warehouse or free zone. Direct transit trade and trans-shipment under bond are excluded. • • •

General imports and special and general exports are contained in this Bulletin.

• • •

Imports and Exports on Government Account are treated as normal transactions and are an integral part of oversea trade statistics.

• • •

Migrants' Effects are included in imports and exports.

Direct Transit Trade.— Particulars of direct transit trade through Australia are not recorded.

Classification of Imports and Exports.—The tables of imports and exports have been compiled according to a re-

vised statistical classification divided into 21 classes, which came into operation on 1st July, 1945. The classification now comprises 2676 items of imports and 1462 items of exports. An extensive index of imports and exports is given on page 575. Many items are recorded according to value only, but in all cases where quantities are recorded particulars concerning both quantities and values are shown.

• • •

In Table III., imports of each statistical item are classified according to country of origin and importing State.

• • •

Valuation.—(*a*) *General.*—All values throughout this Bulletin are expressed in £ (Aust.).

• • •

(*c*) *Imports.*—The value included in the tabulation of goods imported represents the amount on which duty is payable or would be payable if the duty were *ad valorem.* Section 154(I) of the Customs Act 1901-1953 provides that when any duty is imposed according to value, the value for duty shall be the sum of the following:—

(*a*) (i) the actual money price paid or to be paid for the goods by the Australian importer plus any special deduction; or

(ii) the current domestic value of the goods, whichever is the higher;

(b) all charges payable or ordinarily payable for placing the goods free on board at the port of export;

"Current domestic value" is defined as "the amount for which the seller of the goods to the purchaser in Australia is selling or would be prepared to sell for cash, at the date of exportation of these goods, the same quantity of identically similar goods to any and every purchaser in the country of export for consumption in that country".

The recorded value of Australia's imports is, therefore, "transaction value (f.o.b.)" or "domestic value (f.o.b.)", whichever is the higher

• • •

Supplementary Bulletins.—In order to meet the demand for up-to-date statistics of Australia's Oversea Trade two mimeographed bulletins containing 1953-54 statistics in considerable detail have been issued. The first of these bulletins, *Oversea Trade—Preliminary Bulletin* 1953-54, was published in September, 1954, and contains particulars of imports and exports classified according to statistical item and country. The other mimeographed bulletin, *Imports Cleared for Home Consumption* 1953-54, was published in two volumes in December, 1954, and shows the quantity and value of goods cleared (and duty paid thereon) under each tariff item classified according to statistical item and further subdivided according to country of origin and nature of tariff.

Abbreviation.—N.E.I. means "not elsewhere included".

• • •

S. R. CARVER,
Acting Commonwealth Statistician.

Commonwealth Bureau of Census and Statistics,
Canberra, A.C.T., 19th October, 1954.

OVERSEA TRADE, 1954-55.

Preface.

Source of Data.—These statistics of Australia's trade with other countries, and of Customs and Excise Revenue, for the year ended 30th June, 1955, together with comparative figures for previous years in abridged form, have been compiled from documents obtained under the Customs Act and supplied to this Bureau by the Department of Trade and Customs.

• • •

The Trade System.—There are two generally accepted systems of recording oversea trade statistics, namely, (*a*) special trade and (*b*) general trade. The Statistical Office of the United Nations defines the two system as follows:—

* * *

(*b*) *General Trade.* General imports are the combined total of imports directly for domestic consumption and imports into bonded warehouse or free zone. Direct transit trade and trans-shipment under bond are excluded. * * *

General imports and exports are contained in this Bulletin.

* * *

Imports and Exports on Government Account are treated as normal transactions and are an integral part of oversea trade statistics.

* * *

Migrants' Effects are included in imports and exports.

Direct Transit Trade.—Particulars of direct transit trade through Australia are not recorded.

Classification of Imports and Exports.—The tables of imports and exports have been compiled according to a revised statistical classification divided into 21 classes, which came into operation on 1st July, 1945. The classification now comprises 2123 items of imports and 1089 items of exports. An extensive index of imports and exports is given on page 529. Many items are recorded according to value only, but in all cases where quantities are recorded particulars concerning both quantities and values are shown.

* * *

In Table III., imports of each statistical item are classified according to country of origin and importing State.

* * *

Valuation.—(*a*) *General.*— All values throughout this Bulletin are expressed in £ (Aust.)

• • • •

(*c*) *Imports.*—The value included in the tabulation of goods imported represents the amount on which duty is payable or would be payable if the duty were *ad valorem.* Section 154(I) of the Customs Act 1901-1954 provides that when any duty is imposed according to value, the value for duty shall be the sum of the following:—

(*a*) (i) the actual money price paid or to be paid for the goods by the Australian importer plus any special deduction; or

(ii) the current domestic value of the goods, whichever is higher;

(b) all charges payable or ordinarily payable for placing the goods free on board at the port of export;

"Current domestic value" is defined as "the amount for which the seller of the goods to the purchaser in Australia is selling or would be prepared to sell for cash, at the date of exportation of these goods, the same quantity of identically similar goods to any and every purchaser in the country of export for consumption in that country".

The recorded value of Australia's imports is, therefore, "transaction value (f.o.b.)" or "domestic value (f.o.b.)", whichever is the higher.

• • •

Supplementary Bulletins.—In order to meet the demand for up-to-date statistics of Australia's Oversea Trade two mimeographed bulletins containing 1954-55 statistics in considerable detail have been issued. The first of these bulletins, *Oversea Trade—Preliminary Bulletin* 1954-55, was published in August, 1955, and contains particulars of imports and exports classified according to statistical item and country. The other mimeographed bulletin, *Imports Cleared for Home Consumption* 1954-55, published in two volumes in November, 1955, shows the quantity and value of

goods cleared (and duty paid thereon) under each tariff item classified according to statistical item and further subdivided according to country of origin and nature of tariff.

Abbreviation.—N.E.I. means "not elsewhere included".

• • •

S. R. CARVER,
Acting Commonwealth Statistician.

Commonwealth Bureau of Census and Statistics,
Canberra, A.C.T., 6th October, 1955.

OVERSEA TRADE, 1955-56.

Preface.

Source of Data.—These statistics of Australia's trade with other countries, and of Customs and Excise Revenue, for the year ended 30th June, 1956, together with comparative figures for previous years in abridged form, have been compiled from documents obtained under the Customs Act and supplied to this Bureau by the Department of Customs and Excise.

• • •

The Trade System.—There are two generally accepted systems of recording oversea trade statistics, namely, (*a*) special trade and (*b*) general trade. The Statistical Office of the United Nations defines the two system as follows:—

• • •

(*b*) *General Trade.* General imports are the combined total of imports directly for domestic consumption and imports into bonded warehouse or free zone. Direct transit trade and trans-shipment under bond are excluded. • • •

General imports and exports are contained in this Bulletin.

• • •

Imports and Exports on Government Account are treated as normal transactions and are an integral part of oversea trade statistics.

• • •

Migrants' Effects are included in imports and exports.

Direct Transit Trade.—Particulars of direct transit trade through Australia are not recorded.

Classification of Imports and Exports.—The tables of imports and exports have been compiled according to a revised statistical classification divided into 21 classes, which came into operation on 1st July, 1945. The classification now comprises 2201 items of imports and 1056 items of exports. An extensive index of imports and exports is given on page 543. Many items are recorded according to value only, but in all cases where quantities are recorded particulars concerning both quantities and values are shown.

• • •

In Table III., imports of each statistical item are classified according to country of origin and importing State.

• • •

Valuation.—(*a*) *General.*—All values throughout this Bulletin are expressed in £ (Aust.).

• • •

(*c*) *Imports.*—The value of goods imported represents the amount on which duty is payable or would be payable if the duty were *ad valorem.* Section 154 (I) of the Customs Act 1901-1954 provides that when any duty is imposed according to value, the value for duty shall be the sum of the following:—

(*a*) (i) the actual money price paid or to be paid for the goods by the Australian importer plus any special deduction; or

(ii) the current domestic value of the goods, whichever is the higher;

(*b*) all charges payable or ordinarily payable for placing the goods free on board at the port of export;

"Current domestic value" is defined as "the amount for which the seller of the goods to the purchaser in Australia

is selling or would be prepared to sell for cash, at the date of exportation of these goods, the same quantity of identically similar goods to any and every purchaser in the country of export for consumption in that country".

The recorded value of Australia's imports is, therefore, "transaction value (f.o.b.)" or "domestic value (f.o.b.)", whichever is the higher

• • •

Supplementary Bulletins.—In order to meet the demand for up-to-date statistics of Australia's Oversea Trade two mimeographed bulletins containing 1955-56 statistics in considerable detail have been issued. • • • The other mimeographed bulletin, *Imports Cleared for Home Consumption* 1955-56, published in two volumes in November, 1956, shows the quantity and value of goods cleared (and duty paid thereon) under each tariff item classified according to statistical item and further subdivided according to country of origin and nature of tariff.

Abbreviation.—N.E.I. means "not elsewhere included".

• • •

S. R. CARVER,
Acting Commonwealth Statistician.

Commonwealth Bureau of Census and Statistics,
Canberra, A.C.T., 27th November, 1956.

OVERSEA TRADE, 1956-57.

Preface.

Source of Data.—These statistics of Australia's trade with other countries, and of Customs and Excise Revenue, for the year ended 30th June, 1957, together with comparative figures for previous years in abridged form, have been compiled from documents obtained under the Customs Act 1901-1954 and supplied to this Bureau by the Department of Customs and Excise.

• • •

The Trade System.—There are two generally accepted systems of recording oversea trade statistics, namely, (*a*) special trade and (*b*) general trade. The Statistical Office of the United Nations defines the two systems as follows:—

* * *

(*b*) *General Trade.* General imports are the combined total of imports directly for domestic consumption and imports into bonded warehouses or free zones. Direct transit trade and trans-shipment under bond are excluded. * * *

General imports and exports are contained in this Bulletin.

* * *

Imports and Exports on Government Account are treated as normal transactions and are an integral part of oversea trade statistics.

* * *

Migrants' Effects are included in imports and exports.

Direct Transit Trade.—Particulars of direct transit trade through Australia are not recorded.

Classification of Imports and Exports.—The tables of imports and exports have been compiled according to a revised statistical classification divided into 21 classes, which came into operation on 1st July, 1945. The classification now comprises 2264 items of imports and 1072 items of exports. An extensive index of imports and exports is given on page 553. Many items are recorded according to value only, but in all cases where quantities are recorded particulars concerning both quantities and values are shown.

* * *

In Table III., imports of statistical items are classified according to country of origin and importing State.

* * *

Valuation—(*a*) *General.*—All values throughout this Bulletin are expressed in £ (Aust.).

• • •

(*c*) *Imports.*—The value of goods imported represents the amount on which duty is payable or would be payable if the duty were *ad valorem.* Section 154(1) of the Customs Act 1901-1954 provides that when any duty is imposed according to value, the value for duty shall be the sum of the following:—

(*a*) (i) the actual money price paid or to be paid for the goods by the Australian importer plus any special deduction; or

(ii) the current domestic value of the goods, whichever is the higher;

(b) all charges payable or ordinarily payable for placing the goods free on board at the port of export;

"Current domestic value" is defined as "the amount for which the seller of the goods to the purchaser in Australia is selling or would be prepared to sell for cash, at the date of exportation of these goods, the same quantity of identically similar goods to any and every purchaser in the country of export for consumption in that country".

The recorded value of Australia's imports is, therefore, "transaction value (f.o.b.)" or "domestic value (f.o.b)", whichever is the higher.

• • •

Supplementary Bulletins.—In order to meet the demand for up-to-date statistics of Australia's oversea trade, two mimeographed bulletins containing 1956-57 statistics in considerable detail have been issued. • • • The other mimeographed bulletin, *Imports Cleared for Home Consumption* 1956-57, published in two volumes in November, 1957, shows the quantity and value of goods cleared (and duty paid thereon) under each tariff item classified according to statistical items and further subdivided according to country of origin and nature of tariff.

Abbreviation.—N.E.I. means "not elsewhere included".

• • •

S. R. CARVER,
Commonwealth Statistician.

Commonwealth Bureau of Census and Statistics,
Canberra, A.C.T., 21st November, 1957.

OVERSEA TRADE, 1957-58.

Preface

Source of Data.—These statistics of Australia's trade with other countries, and of Customs and Excise Revenue, for the year ended 30th June, 1958, together with comparative figures for previous years in abridged form, have been compiled by the Commonwealth Bureau of Census and Statistics from documents obtained under the Customs Act 1901-1957 by the Department of Customs and Excise.

• • •

The Trade System.—There are two generally accepted systems of recording oversea trade statistics, namely, (*a*) special trade and (*b*) general trade. The Statistical Office of the United Nations defines the two systems as follows:—

• • •

(*b*) *General Trade.* General imports are the combined total of imports directly for domestic consumption and imports into bonded warehouses or free zones. Direct transit trade and trans-shipment under bond are excluded.

• • •

General imports and exports are contained in this Bulletin.

• • •

Imports and Exports on Government Account are treated as normal transactions and are an integral part of oversea trade statistics.

• • •

Migrants' Effects are included in imports and exports.

Direct Transit Trade.—Particulars of direct transit trade through Australia are not recorded.

Classification of Imports and Exports.—The tables of imports and exports have been compiled according to the Statistical Classification of Imports and Exports. The classification comprises over 2,000 items of imports and over 1,000 items of exports. An extensive index of imports and exports is given on page 587 with the statistical item number shown against each item listed.

• • •

In Table No. 3, imports of statistical items are classified according to country of origin and importing State.

• • •

Valuation.—(*a*) *General.*—All values throughout this Bulletin are expressed in £ (Aust.).

• • •

(*c*) *Imports.*—The value of goods imported represents the amount on which duty is payable or would be payable if the duty were *ad valorem.* Section 154(1) of the Customs Act 1901-1957 provides that when any duty is imposed according to value, the value for duty shall be the sum of the following:—

(*a*) (i) the actual money price paid or to be paid for the goods by the Australian importer plus any special deduction; or

(ii) the current domestic value of the goods, whichever is the higher;

(*b*) all charges payable or ordinarily payable for placing the goods free on board at the port of export.

"Current domestic value" is defined as "the amount for

which the seller of the goods to the purchaser in Australia is selling or would be prepared to sell for cash, at the date of exportation of these goods, the same quantity of identically similar goods to any and every purchaser in the country of export for consumption in that country".

The recorded value of Australia's imports is, therefore, "transaction value (f.o.b)" or "domestic value (f.o.b.)", whichever is the higher.

* * * *

Supplementary Bulletins.—In order to meet the demand for up-to-date statistics of Australia's oversea trade, two mimeographed bulletins are issued containing statistics in considerable detail for the latest financial year. * * * The other mimeographed bulletin, *Imports Cleared for Home Consumption* 1957-58, shortly to be published in two volumes, shows the quantity and value of goods cleared (and duty paid thereon) under each tariff item classified according to statistical item and further subdivided according to country of origin and nature of tariff.

Abbreviation.—N.E.I. means "not elsewhere included".

S. R. CARVER,
Commonwealth Statistician.

Commonwealth Bureau of Census and Statistics,
Canberra, A.C.T., 21st November, 1958.

OVERSEA TRADE, 1958-59.

Preface.

Source of Data.—These statistics of Australia's trade with other countries, and of customs and excise revenue, for the year ended 30th June, 1959, together with comparative

figures for previous years in abridged form, have been compiled by the Commonwealth Bureau of Census and Statistics from documents obtained under the Customs Act 1901-1959 by the Department of Customs and Excise:

• • •

The Trade System.—There are two generally accepted systems of recording oversea trade statistics, namely, (*a*) special trade and (*b*) general trade. The Statistical Office of the United Nations defines the two systems as follows:—

• • •

(*b*) *General Trade.* General imports are the combined total of imports directly for domestic consumption and imports into bonded warehouse or free zone. Direct transit trade and trans-shipment under bond are excluded.

• • •

General imports and exports are contained in this Bulletin.

• • •

Imports and Exports on Government Account are treated as normal transactions and are an integral part of oversea trade statistics.

• • •

Migrants' Effects are included in imports and exports.

Direct Transit Trade.—Particulars of direct transit trade through Australia are not recorded.

Classification of Imports and Exports.—The tables of imports and exports have been compiled according to the Statistical Classification of Imports and Exports. The classification comprises over 2,000 items of imports and over 1,000 items of exports. An extensive index of imports and

exports is given on page 603 with the statistical item number shown against each item listed.

• • •

In Table No. 3, imports of statistical items are classified according to country of origin and importing State.

• • •

Valuation.—(*a*) *General.*—All values throughout this Bulletin are expressed in £ (Aust.).

• • •

(c) *Imports.*—The value of goods imported represents the amount on which duty is payable or would be payable if the duty were *ad valorem.* Section 154(1) of the Customs Act 1901-1959 provides that when any duty is imposed according to value, the value for duty shall be the sum of the following:—

(*a*) (i) the actual money price paid or to be paid for the goods by the Australian importer plus any special deduction; or

(ii) the current domestic value of the goods, whichever is the higher;

(*b*) all charges payable or ordinarily payable for placing the goods free on board at the port of export.

"Current domestic value" is defined as "the amount for which the seller of the goods to the purchaser in Australia is selling or would be prepared to sell for cash, at the date of exportation of these goods, the same quantity of identically similar goods to any and every purchaser in the country of export for consumption in that country".

The recorded value of Australia's imports is, therefore, "transaction value (f.o.b)" or "domestic value (f.o.b.)", whichever is the higher.

• • •

Supplementary Bulletins.—In order to meet the demand for up-to-date statistics of Australia's oversea trade, three supplementary bulletins are issued containing statistics in considerable detail for the latest financial year. • • • The other bulletin, *Imports Cleared for Home Consumption* 1958-59, shortly to be published, shows the quantity and value of goods cleared (and duty paid thereon) under each tariff item classified according to statistical item and further subdivided according to country of origin and nature of tariff.

Abbreviation.—N.E.I. means "not elsewhere included".

• • •

S. R. CARVER,
Commonwealth Statistician.

Commonwealth Bureau of Census and Statistics,
Canberra, A.C.T., 12th November, 1959.

OVERSEA TRADE, 1959-60.

Preface.

Source of Data.—These statistics of Australia's trade with other countries, and [redacted] customs and excise revenue, for the year ended 30th June, 1960, together with comparative figures for previous years in abridged form, have been compiled by the Commonwealth Bureau of Census and Statistics from documents obtained under the Customs Act 1901-1960 by the Department of Customs and Excise.

• • •

The Trade System.—There are two generally accepted systems of recording oversea trade statistics, namely, (*a*)

special trade and (*b*) general trade. The Statistical Office of the United Nations defines the two systems as follows:—

• • •

(*b*) *General Trade.* General imports are the combined total of imports directly for domestic consumption and imports into bonded warehouse or free zone. Direct transit trade and trans-shipment under bond are excluded. • • •

General imports and exports are contained in this Bulletin.

• • •

Imports and Exports on Government Account are treated as normal transactions and are an integral part of oversea trade statistics.

• • •

Migrants' Effects are included in imports and exports.

Direct Transit Trade.—Particulars of direct transit trade through Australia are not recorded.

Classification of Imports and Exports.—The tables of imports and exports have been compiled according to the Statistical Classification of Imports and Exports. The classification comprises over 2,500 items of imports and over 1,200 items of exports. To increase the flexibility of the classification the number of digits in the classification code was increased from 4 to 5 on 1st July, 1959. An extensive index of imports and exports is given on page 643 with the statistical item number shown against each item listed.

• • •

In Table No. 3, imports of statistical items are classified according to country of origin and importing State.

• • •

Valuation.—(*a*) *General.*—All values throughout this Bulletin are expressed in £ (Aust.).

• • •

(*c*) *Imports.*—The value of goods imported represents the amount on which duty is payable or would be payable if the duty were *ad valorem.* Section 154(1) of the Customs Act 1901-1960 provides that when any duty is imposed according to value, the value for duty shall be the sum of the following:—

(*a*) (i) the actual money price paid or to be paid for the goods by the Australian importer plus any special deduction; or

(ii) the current domestic value of the goods, whichever is the higher;

(*b*) all charges payable or ordinarily payable for placing the goods free on board at the port of export.

"Current domestic value" is defined as "the amount for which the seller of the goods to the purchaser in Australia is selling or would be prepared to sell for cash, at the date of exportation of these goods, the same quantity of identically similar goods to any and every purchaser in the country of export for consumption in that country".

The recorded value of Australia's imports is, therefore, "transaction value (f.o.b)" or "domestic value (f.o.b.)", whichever is the higher.

* * *

Supplementary Bulletins.—In order to meet the demand for up-to-date statistics of Australia's oversea trade, three supplementary bulletins are issued containing statistics in considerable detail for the latest financial year. * * * The other bulletin, *Imports Cleared for Home Consumption* 1959-60, shortly to be published, shows the quantity and value of goods cleared (and duty paid thereon) under each tariff item classified according to statistical item and further subdivided according to country of origin and nature of tariff.

Abbreviation.—N.E.I. means "not elsewhere included".

• • •

S. R. CARVER,
Commonwealth Statistician.

Commonwealth Bureau of Census and Statistics,
Canberra, A.C.T., 25th November, 1960.

OVERSEA TRADE, 1960-61.

Preface.

Source of Statistics.—Oversea trade statistics are compiled from documents obtained under the Customs Act 1901-1960 and supplied to the Commonwealth Bureau of Census and Statistics by the Department of Customs and Excise.

• • •

Import entries show date and port of entry, country of origin, description of goods, quantity (where required), value of the goods and amount of duty paid thereon. The statistical item number is inserted by the importer or his agent, together with the tariff number under which the goods are admitted and these are verified by statistical officers of the Department of Customs and Excise in the local offices of the Collectors of Customs.

• • •

The Trade System:—There are two generally accepted systems of recording oversea trade statistics, namely, (*a*) special trade and (*b*) general trade. The Statistical Office of the United Nations defines the two systems as follows:—

• • •

(*b*) *General Trade.* General imports are the combined total of imports directly for domestic consumption and imports into bonded warehouse or free zone. Direct transit trade and trans-shipment under bond are excluded. • • •

General imports and exports are contained in this Bulletin.

Classification of Imports and Exports.—The tables of imports and exports have been compiled according to the Statistical Classification of Imports and Exports. The classification comprises over 2,500 items of imports and over 1,200 items of exports. To increase the flexibility of the classification the number of digits in the classification code was increased from 4 to 5 on 1st July, 1959. An extensive index of imports and exports is given on page 671 with the statistical item number shown against each item listed.

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Inclusions and Exclusions.—

• • • •

(*c*) *Imports and Exports on Government Account* are treated as normal transactions and are an integral part of oversea trade statistics.

• • •

(*f*) *Migrants' Effects* are included in imports and exports.

(*g*) *Direct Transit Trade.* Particulars of direct trade through Australia are not recorded.

• • •

In Table No. 3, imports of statistical items are classified according to country of origin and importing State.

• • •

Valuation.—(*a*) *General.* All values throughout this Bulletin are expressed in £ (Aust.).

• • •

(*c*) *Imports.* The value of goods imported represents the amount on which duty is payable or would be payable if the duty were *ad valorem.* Section 154(1) of the Customs Act 1901-1960 provides that when any duty is imposed according to value, the value for duty shall be the sum of the following:—

(*a*) (i) the actual money price paid or to be paid for the goods by the Australian importer plus any special deduction; or

(ii) the current domestic value of the goods, whichever is the higher;

(*b*) all charges payable or ordinarily payable for placing the goods free on board at the port of export.

"Current domestic value" is defined as "the amount for which the seller of the goods to the purchaser in Australia is selling or would be prepared to sell for cash, at the date of exportation of these goods, the same quantity of identically similar goods to any and every purchaser in the country of export for consumption in that country".

The recorded value of Australia's imports is, therefore, "transaction value (f.o.b)" or "domestic value (f.o.b.)", whichever is the higher. These values are f.o.b. port of shipment Australian currency.

• • •

Supplementary Bulletins.—In order to meet the demand for up-to-date statistics of Australia's oversea trade, three supplementary bulletins are issued containing statistics in considerable detail for the latest financial year. • • • The

other bulletin, *Imports Cleared for Home Consumption* 1960-61, to be published shortly, shows the quantity and value of goods cleared (and duty paid thereon) under each tariff item classified according to statistical item and further subdivided according to country of origin and nature of tariff.

Abbreviation.—N.E.I. means "not elsewhere included".

K. M. ARCHER,
Acting Commonwealth Statistician.

Commonwealth Bureau of Census and Statistics,
Canberra, A.C.T., 30th November, 1961.

OVERSEA TRADE, 1961-62.

Preface.

Source of Statistics.—Oversea trade statistics are compiled from documents obtained under the Customs Act 1901-1960 and supplied to the Commonwealth Bureau of Census and Statistics by the Department of Customs and Excise.

The Trade System.—There are two generally accepted systems of recording oversea trade statistics, namely, (*a*) special trade and (*b*) general trade. The Statistical Office of the United Nations defines the two systems as follows:—

(*b*) *General Trade.* General imports are the combined total of imports directly for domestic consumption and imports into bonded warehouse or free zone. Direct transit trade and trans-shipment under bond are excluded.

Statistics in this bulletin are compiled on the "General Trade" basis.

Classification of Imports and Exports.—The tables of imports and exports have been compiled according to the Statistical Classification of Imports and Exports. The classification comprises nearly 3,000 items of imports and over 1,500 items of exports. To increase the flexibility of the classification, the number of digits in the classification code was increased from 4 to 5 on 1st July, 1959. An extensive index of imports and exports is given on page 719 with the statistical item number shown against each item listed.

* * *

Valuation.—General. All values throughout this Bulletin are expressed in £ (Aust.).

* * *

Imports. The recorded value of goods imported represents the amount on which duty is payable or would be payable if the duty were *ad valorem.* Section 154 (1) of the Customs Act 1901-1960 provides that "when any duty is imposed according to value, the value for duty shall be the sum of the following:—

(*a*) (i) the actual money price paid or to be paid for the goods by the Australian importer plus any special deduction; or

(ii) the current domestic value of the goods, whichever is the higher;

(*b*) all charges payable or ordinarily payable for placing the goods free on board at the port of export.

"Current domestic value" is defined as "the amount for which the seller of the goods to the purchaser in Australia is selling or would be prepared to sell for cash, at the date of exportation of these goods, the same quantity of identically similar goods to any and every purchaser in the country of export for consumption in that country".

The recorded value of Australia's imports is, therefore, "transaction value (f.o.b)" or "domestic value (f.o.b.)", whichever is the higher. These values are f.o.b. port of shipment Australian currency.

Inclusions and Exclusions.—

• • •

(*c*) *Imports and Exports on Government Account* are treated as normal transactions and are an integral part of oversea trade statistics,

• • •

(*f*) *Migrants' Effects* are included in imports and exports.

(*g*) *Direct Transit Trade.* Particulars of direct transit trade through Australia are not recorded.

• • •

In Table No. 3, Imports of Statistical Items are classified according to Country of Origin and Importing State.

• • •

Supplementary Bulletins.—In order to meet the demand for up-to-date statistics of Australia's oversea trade, three supplementary bulletins are issued containing statistics in considerable detail for the latest financial year. • • • The third bulletin, *Imports Cleared for Home Consumption*, 1961-62, published in December, 1962, shows the quantity and value of goods cleared (and duty paid thereon) under each tariff item classified according to statistical item and further subdivided according to country of origin and nature of tariff.

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Abbreviation.—N.E.I. means "not elsewhere included".

• • •

K. M. ARCHER,
Commonwealth Statistician.

Commonwealth Bureau of Census and Statistics,
Canberra, A.C.T., 12th November, 1962.

OVERSEA TRADE, 1962-63.

Preface.

Source of Statistics.—Oversea trade statistics are compiled from documents obtained under the Customs Act 1901-1963 and supplied to the Commonwealth Bureau of Census and Statistics by the Department of Customs and Excise.

• • • •

The Trade System.—There are two generally accepted systems of recording oversea trade statistics, namely, (*a*) special trade and (*b*) general trade. Statistics of both are published by the Bureau, although greater emphasis is placed on general trade. The Statistical Office of the United Nations defines the two systems as follows:—

"*System of Trade.* Two systems of recording trade are in common use, differing mainly in the way warehoused and re-exported goods are recorded.

• • • •

(*b*) *General Trade.* General *imports* are the combined total of imports directly for domestic consumption and imports into bonded warehouse or free zone. • • •

Direct transit trade, i.e., goods merely being transhipped or moving through the country for purposes of transport only, is excluded from the statistics of both special and general trade."

Statistics in this bulletin are compiled on the "General Trade" basis.

Classification of Imports and Exports.—The tables of imports and exports have been compiled according to the Statistical Classification of Imports and Exports. The classification comprises nearly 3,700 items of imports and over 1,300 items of exports.

• • •

Valuation.—General. All values throughout this Bulletin are expressed in £ (Aust.).

• • •

Imports. The recorded value of goods imported represents the amount on which duty is payable or would be payable if the duty were *ad valorem.* Section 154 (1) of the Customs Act 1901-1963 provides that "when any duty is imposed according to value, the value for duty shall be the sum of the following:—

(*a*) (i) the actual money price paid or to be paid for the goods by the Australian importer plus any special deduction; or

(ii) the current domestic value of the goods, whichever is the higher;

(*b*) all charges payable or ordinarily payable for placing the goods free on board at the port of export.

"Current domestic value" is defined as "the amount for which the seller of the goods to the purchaser in Australia is selling or would be prepared to sell for cash, at the date of exportation of these goods, the same quantity of identically similar goods to any and every purchaser in the country of export for consumption in that country". The recorded values of Australia's imports, as shown throughout this bulletin, are therefore "transaction value (f.o.b.)" or "domestic value (f.o.b.)" whichever is the higher. These values are f.o.b. port of shipment Australian currency.

Inclusions and Exclusions—

• • •

(*c*) *Imports and Exports on Government Account* are treated as normal transactions and are an integral part of oversea trade statistics.

• • •

(f) *Migrants' Effects* are included in imports and exports.

(*g*) *Direct Transit Trade.* Particulars of direct transit trade through Australia are not recorded.

• • •

In Table No. 3, Imports of Statistical Items are classified according to Country of Origin and Importing State.

• • •

Supplementary Bulletins.—In order to meet the demand for up-to-date statistics of Australia's oversea trade, three supplementary bulletins are issued containing statistics in considerable detail for the latest financial year. • • • The third bulletin, *Imports Cleared for Home Consumption*, 1962-63, also to be published in December, 1963, shows the quantity and value of goods cleared (and duty paid thereon) under each tariff item classified according to statistical item and further subdivided according to country of origin and nature of tariff.

• • •

Abbreviation.—N.E.I. means "not elsewhere included".

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K. M. ARCHER,
Commonwealth Statistician.

Commonwealth Bureau of Census and Statistics,
Canberra, A.C.T., November, 1963.

ZENITH CROSS-CLAIMANT EXHIBIT NO. 25.

(Embargo Hearing)

IMPORTS INTO UK

Radio Receiving Sets—Mains

	Number						£s value					
	1953	1954	1955	1956	1957	1958 (Jan.-Sept.)	1953	1954	1955	1956	1957	1958 (Jan.-Sept.)
Commonwealth countries	296	161	93	153	—	—	4,241	1,580	1,272	2,352	—	—
Irish Republic	323	4,992	13,817	11,103	—	—	999	68,696	148,748	125,137	—	—
Total above	619	5,153	13,910	11,256	440	642	5,240	70,576	150,020	127,489	5,523	5,754
Western Germany	15	238	16,978	7,274	17,443	2,713	308	2,870	257,706	122,797	276,739	57,316
Other foreign countries	300	244	796	393	951	249	3,904	2,248	4,844	3,740	7,516	2,523
Total foreign countries	315	482	17,774	7,667	18,394	2,962	4,212	5,118	262,550	126,537	284,255	59,839
Grand Total	934	5,635	31,684	18,923	18,834	3,604	9,452	75,694	412,570	254,026	289,778	65,593
							$26,466	211,943	1,155,196	711,273	811,378	183,660

Radio Receiving Sets—Other
(incl. mains/battery and car radio)

Commonwealth countries & Irish Republic	107	26	60	91	121	136	1,969	387	881	1,773	3,044	1,438
Western Germany	6	215	2,399	615	10,674	4,681	203	1,470	14,151	6,976	51,765	29,983
Netherlands	46	42	17	3,020	2,016	31	325	378	122	16,943	25,998	390
Other foreign countries	42	67	153	587	209	217	842	1,330	1,929	4,412	8,533	2,731
Total foreign countries	94	324	2,569	4,222	12,899	4,929	1,370	3,178	16,202	28,331	86,296	33,104
Grand Total	201	350	2,629	4,313	13,020	5,067	3,339	3,565	17,083	30,104	89,340	34,542
							$9,349	9,982	47,832	84,291	250,152	96,718

ZENITH CROSS-CLAIMANT EXHIBIT NO. 26.
(Embargo Hearing)

IMPORTS INTO UK (contd. 1)

Television Sets—complete

	Number						£s value					
	1953	1954	1955	1956	1957	1958 (Jan.-Sept.)	1953	1954	1955	1956	1957	1958 (Jan.-Sept.)
Channel Islands	34	13	32	252	63	25	1,760	659	1,886	11,239	3,273	933
Canada	4	4	—	1,724	71	2	287	310	—	97,880	4,031	151
Other Commonwealth countries	4	—	26	16	6	5	208	—	547	1,776	372	134
Irish Republic	10	7	21	5,228	5,957	30	371	436	861	149,021	155,555	1,061
Total above	52	24	79	7,220	6,117	62	2,626	1,405	3,294	259,916	163,231	2,279
Italy	5	1	3	207	6	2	211	55	61	5,700	225	151
USA	12	18	35	32	19	16	667	938	6,185	5,272	1,291	1,087
Other foreign countries	43	95	87	41	115	64	2,619	3,576	5,640	2,530	5,575	2,202
Total foreign countries	60	114	125	280	140	82	3,497	4,509	11,886	13,502	7,091	3,440
Grand Total	112	138	204	7,500	6,257	144	6,123	5,914	15,180	273,418	170,322	5,719
							$17,144	16,559	42,504	765,570	476,902	16,013

Zenith Cross-Claimant Exhibit No. 26

3435

1 IN THE UNITED STATES DISTRICT COURT.
(Caption—59-C-1847)

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause, before the Honorable Richard B. Austin, one of the Judges of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois, on Monday, November 22, 1965, at 10:00 o'clock, a.m.

5 SAMUEL KAPLAN, witness called on behalf of the defendant, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination by Mr. McConnell.

Q. Do you recall, Mr. Kaplan, that you estimated certain—

The Court: Is this in regard to both countries or just one country?

Mr. McConnell: Both, your Honor.

The Court: All right.

By Mr. McConnell:

6 Q. (Continuing.)—that you estimated certain percentages of the English market and the Australian market which you thought that Zenith could obtain during approximately a four month period—or four year period?

A. Yes.

Q. Do you recall what your percentage, your estimate, was in England?

A. Well, actually, Mr. McConnell, we—the final percentage that we arrived at for England was—

The Court: This is your testimony that he is asking you about, not what you may have arrived at at some other time and place, but what you testified to in court. Do you know what that was?

The Witness: Yes.

The Court: All right.

By the Witness:

A. I testified in England we could obtain twenty-five per cent of the market share that we did obtain in the United States.

In Australia that we could obtain ten per cent of the market share that we did obtain in the United States.

7 By Mr. McConnell:

Q. Now, in making those estimates, Mr. Kaplan, let's take England first, did you assume that Zenith would be starting from scratch?

Mr. Kayser: Just a minute. I object to leading the witness.

The Court: Well, in view of the fact that that really is the crux of what we are here for, I think I am going to let him answer that despite the fact that it is a leading question, because that is getting down to the nub of the situation and the objection is overruled.

8 By Mr. McConnell:

Q. You may answer the question, Mr. Kaplan.

A. May I have the question, please.

(Question read.)

By the Witness:

A. Yes, I did.

By Mr. McConnell:

Q. And in making your estimate with reference to Australia, did you make that assumption that you would be starting from scratch?

A. Yes, I did.

Mr. McConnell: You may cross-examine.

The Court: Did I make a proper assumption, Counsel?

Mr. Kayser: Sir?

The Court: Did I make a proper assumption?

Mr. Kayser: You most certainly did.

The Court: All right.

Cross-Examination by Mr. Kayser.

Q. What do you mean by starting from scratch, Mr. Kaplan?

A. That we didn't have an established dealer organ-
9 ization or marketing organization in England.

The Court: Or Australia?

The Witness: Or Australia.

By Mr. Kayser:

Q. In order words—strike that.

Starting from scratch at what point in time?

A. Starting from scratch as of June 1959.

Q. What date in June, 1959?

A. June 1st.

Q. Starting from scratch at what date in Australia?

A. June 1st, 1959.

Q. Do I understand, then, that you are testifying that in giving these estimated percentages, these were the percentages which you assert—percentages of the market

which you assert Zenith Radio Corporation could have obtained newly entering the market June 1, with no previous activities in the market?

A. Yes, with no previous activities in the market in the form of marketing, although we had over a period of years conducted discussions with people who wanted to handle our product in those countries and we knew there was a demand there.

Q. Well, aside from the embroidery on your answer, I understand, then, that you are saying that the testimony which you gave as to England and Australia back in February 1964, was that with no previous sales, imports, advertising, distributorship, warehousing, servicing organization, starting absolutely as a complete newcomer, you could have come into those markets on June 1, 1959, and achieved the share of the market you testified to during the four years?

A. Well, I don't feel that we should assume that the effect of advertising was not existent there. But otherwise my answer is that we could have attained that share of the market.

Q. Assuming no markets of completed radio or television sets prior to June 1, 1959?

A. Yes.

Q. Did you make the same assumption as to Canada?

A. No.

Q. You didn't

A. No.

Q. What was your assumption as to Canada?

Mr. McConnell: I object as to Canada, your Honor. We have a judgment on the Canadian part of the case. It's gone to the Court of Appeals.

The Court: It's admissible only for the purpose of—not changing the judgment in regard to Canada, but in regard to his thinking in regard to Australia and England, and Canada the Court is aware of, had no Governmental restrictions.

So as a basis for comparison of his answer, the objection is overruled. Don't be concerned about your Canadian judgment.

Mr. McConnell: Thank you, your Honor.

12 The Court: That's not what we are going into.

Mr. Kayser: Would you read the question, Mr. Reporter?

Mr. McConnell: I may observe, however, for the record, that I think—and this is just my personal observation—that Mr. Kayser's trying in this proceeding to get something with which he can attack the judgment in the Court of Appeals in Canada.

The Court: I mean, that might be your assumption, but maybe it would be safer if you did as Mr. Kayser does, and make no assumptions.

Read the question.

Mr. Kayser: Read the question, please.

The Court: So much goes on, he can't find it.

(Question read.)

The Court: Do you understand that question?

The Witness: Yes, your Honor. In Canada, our assumption was that we commenced the period starting

13 June 1, 1959 as if we had had a full blown organization, and had enjoyed the benefits of doing business there for years prior to that date.

By Mr. Kayser:

Q. All right. Why did you engage in that assumption in Canada and not in England and in Australia?

A. Because we knew that in England and in Australia, there were restrictions on the importation of our products.

Q. Are you referring to the governmental restrictions on the import of completed radio and television sets?

A. Excuse me. I am referring to the governmental restrictions on the availability of exchange, and the unavailability of import quotas.

Q. You kept that in mind both in England and Australia?

A. Yes, sir.

Q. You say that for that reason, in England and Australia you chose June 1 as the date at which you would theoretically have entered the market in this four-year damage computation?

Mr. McConnell: I don't think he so testified, your Honor.

The Court: If he didn't he can say that he didn't.

By the Witness:

A. It's not my ecollection that that was the reason that we chose that date. That was the date that was given to us by our attorneys as an appropriate date for a damage claim.

By Mr. Kayser:

Q. That was given to you by your attorneys? You didn't know why?

A. Yes. We also knew that at approximately that date, from approximately that date forward, there was a substantial change in the availability of exchange and the availability of import quotas.

Q. In both England and Australia?

A. In both England and Australia.

Q. Well, deserting that for the moment, but only for the moment, is it your testimony then that with those assumptions, and beginning on that date, you could have obtained in the United Kingdom and in Australia the shares of market shown on Zenith's Exhibit 220?

A. For the four-year period, yes.

15 Q. Is it your testimony, then, that beginning—that for the last seven months of 1959, starting from scratch as you put it, you could in England have sold one quarter of the percentage of the English market which was sold of the U. S. market?

A. No, not necessarily on a day by day, or a week by week, or a month by month, or even a year by year basis. But in the four-year period, it was our judgment that we could do the amount of business that is shown in that Exhibit.

Q. Well, I would like an answer. For the last seven months of 1959 where your Exhibit 220 shows Zenith is selling 3,904 per cent of the television sets, or 53,210 sets as its potential, is it your testimony that starting from June 1, 1959, starting from scratch, Zenith could have sold 63,210 sets in those seven months?

A. I thought I just answered that.

16 Q. I don't think you did. I wish you would. Is that your testimony or is it not?

A. We felt that it was impossible, on a day-by-day, or a month-by-month or a year-by-year basis, to determine the amount of business to be done in each of these shorter periods. But we felt that it was reasonable in relation to the total amount of business done in England or in Aus-

tralia that we could, in the four-year period, do the amount of business that we claimed we could have done.

Q. Could you have sold 63,210 sets in the last seven months of 1959?

A. I don't know.

Q. What was your testimony? That you could or that you couldn't?

A. I don't recall that I testified to that.

Q. You didn't testify. Could you in 1960 have sold 81,720 sets?

A. I don't know.

Q. You don't know. Is what you are testifying to this thing that Mr. McConnell kept bringing up once he was faced with the embargo, that what you were saying was not what you could sell in these periods, but you could sell something which on an over-all average came to one-quarter of what you were selling in the United States?

A. I am testifying to our process of our judgment, as to how we arrived at this.

Q. I'm trying to find out how you arrived at it. You say you don't know whether or not you could have sold 63,210 sets, television sets, in England in the last seven months of '59, starting from scratch on June 1. You say you don't know; is that it?

The Court: That's what he said. Let's not have him say it twice.

By Mr. Kayser:

Q. All right. Now, is it your testimony that on an over-all average during the four-year period, you could

have obtained one-quarter of the English percentage which you claimed in the United States?

A. Well, if your definition of average does not insinuate that this is that much on each day, yes.

Q. I'm speaking during each period.

A. No, I didn't testify to that, and that was not 18 the process of our judgment.

Q. Do you know how many sets you could have sold in 1961, television sets, starting from scratch June 1, 1959?

A. I don't know.

Q. You don't know.

Mr. Kayser: Your Honor, I move that the testimony of this witness be stricken. Your Honor directed that these hearings be held after you found the embargo was established for the purpose of determining, in connection with the proof which was in this case now, whether it was on the basis that Zenith could have established its share of the market prior to the damage period or whether that evidence—or whether the figures they used, namely Zenith's, were figures that would be used in regard to a product newly introduced into the country.

Now I submit, your Honor, what this witness is proposing to do, and I gather Zenith is proposing to do, is in effect to disavow the figures which are in Zenith's Exhibit 220.

19 The Court: Is there a copy of that around? May I have a copy?

Mr. Kayser: There is a typed copy of the relevant page.

The Court: Maybe if I look at it I will understand what you are talking about.

Mr. McConnell: May I say this before we get into this discussion, that the ordinary procedure, I think, is after

a witness is cross examined, if he is through with it, that I have an opportunity to—

The Court: Are you through with this witness?

Mr. Kayser: No, your Honor, I have barely begun, but it is obvious that what they are proposing to do is outside the scope of the record.

The Court: I don't know whether I can determine that at this time. As I understood it, we were having this hearing for the purpose of determining whether they stayed with their testimony of last time that in each of these periods, or for the total period, they would have had a certain percentage of the market regardless of the fact that they had never sold a set or been able to sell a set in England or Australia prior to the time the damage period began.

Mr. Kayser: Well, your Honor, I will withdraw the motion and renew it later.

The Court: Well, I think at this time it is premature, and it is so unclear to me as to what you are driving at—it may develop further, with further cross-examination, that I could more intelligently rule on such a motion at a later time.

Mr. Kayser: All right.

By Mr. Kayser:

Q. I believe you are executive vice president of Zenith—

A. That is right.

Q. —Radio Corporation?

A. That is right.

Q. And have been with the company for a good many years?

A. Yes.

Q. And you were, of course, familiar before today that this litigation was going on?

A. Yes.

Q. And this is an important piece of litigation, is it not, as far as Zenith is concerned?

A. Yes.

Mr. McConnell: I don't think this witness' opinion on that has anything to add to this litigation, your Honor.

The Court: And I think without his opinion, why, it is the consensus of several thousand people that that is true regardless of what he thinks.

Mr. Kayser: Yes, I assume we refer to the Hazeltine shareholders.

The Court: Yes, and maybe the Zenith shareholders too.

Mr. Kayser: Yes.

By Mr. Kayser:

Q. Now, isn't it a fact, Mr. Kaplan, that Zenith has taken the position from the beginning of this litigation that for many years it was excluded by patent pools from importing radio and television sets into all three countries, Canada, England and Australia?

The Court: Well, it has not only taken that position, Counsel, but they persuaded the Court to so find.

Mr. McConnell: Well, I object to this, what this witness' opinion of that is. We had a trial. We have got a very limited issue involved here, your Honor.

The Court: I know, and I am trying to stay hewed to the line. I will let him answer the question.

Can you find it and read it, Mr. Court Reporter? I didn't know that was the matter of a controversy?

(Question was read.)

By the Witness:

A. I think that that is correct.

23 By Mr. Kayser:

Q. Well, is Zenith withdrawing its contention that the pools kept Zenith out of England and Australia prior to June, 1959?

A. I don't feel that I am competent to answer that.

Q. You don't know what the answer to that is?

A. I don't feel I should answer.

Q. I did not ask you whether you should. Can you answer it?

The Court: Speaking on behalf of management or of Zenith, can you answer that?

By Mr. Kayser:

Q. And executive vice president, also.

A. Well, I would have to answer it by saying that there is no question that these pools existed and operated in this manner. Now, there were some periods when there were other restrictions to our doing business in England and Australia.

Q. That period was prior to June 1959?

A. Yes.

Q. In other words, Zenith now agrees that its previous contentions that the pools kept Zenith out of England

24 prior to June, 1959, was not correct, is that so?

Mr. McConnell: I object to that. That is a legal question. You are asking this man to interpret the law on this. This is a question a lawyer would answer.

Mr. Kayser: I think this is very relevant when the witness gets on the stand and says they started with their computations on June 1, 1959, because of restrictions.

Mr. McConnell: He did not say that. We went all over that. He said that he did it because his lawyers told him to do that.

Mr. Kayser: No, he didn't. Previous to that, Mr. McConnell, he had—

The Court: My understanding of the evidence and the complaints and the answers, and everything else that went on in this case is that it was their contention that that was true at the time the lawsuit was filed, and I haven't heard anybody say that they still contend that it isn't so. A new element entered into this thing at the last hearing in regard to something other than what they contended was keeping them out of the market, but I haven't heard anybody say that Zenith contends now or contended at any time that the patent pools were not keeping them out in the event the Government didn't keep them out in the first place.

The objection is sustained to the question.

By Mr. Kayser:

Q. At the time you testified in February, 1964, Mr. Kaplan, did you know that there had been such restraint, currency restrictions, I think you called them, in effect in England until June 1959?

A. Yes.

Q. And for that reason you started with the June 1, 1959, date on your computation damage?

A. Well, the answer—

Mr. McConnell: Well, I object to this. He answered this once before, that he started June 1st because the lawyers gave him that period.

Mr. Kayser: That is not what he testified to, Mr. McConnell.

Mr. McConnell: The record wil show what he testified to, but that is what it was.

The Court: Read the question, Mr. Reporter, the one that he is objecting to.

(Record was read.)

The Court: No, the objection is overruled.

By the Witness:

A. The June 1 date was given to us by our attorneys and they told me that there were no restrictions after that date.

By Mr. Kayser:

Q. Did they tell you when the restrictions had been removed?

A. I don't recall that they did at that time.

Q. Who told you that? Who is "they"?

A. Our attorneys.

27 Q. Who is your attorney?

A. Well, I think at that time it was Mr. Curtis that we discussed this with.

Q. All right, did you then know how long the import restrictions lasted in England?

A. I am not sure I understand that question.

Q. I said, at the time that you testified, did you know how long the import restrictions had lasted in England?

A. They had been in existence for many years prior to 1959.

Q. Do you know when they terminated?

A. I think the official date they terminated was June the 8th, 1959.

Q. Did you know that then?

A. Yes.

Q. In February of 1964?

A. Yes.

Q. Now, why did you take the June 1 date in Australia?

A. Because that was the date that our attorneys suggested that we use for the damage claim.

Q. By the way, did you tell this Court that you were—in the case of Canada you were making your assump-

28 tion based on many, many years in the market, but

in the case of England or Australia you were starting June 1, 1959?

Mr. McConnell: I object to that, whatever the record shows—

The Court: The record shows what he said.

Mr. Kayser: All right, the record shows that he did not. Strike the question.

Mr. McConnell: I move to strike your statement.

By Mr. Kayser:

Q. Well, in February, 1964, what did you know about the currency restrictions in Australia?

A. Well, Mr. Kayser, I am not an expert on these matters. I am given certain information on which to make a judgment, and based on that information, based on the background that we had, we had conducted market studies in these countries, we had talked to many people in these countries, and I was given this information on tariffs. I don't recall specifically now what it was, and based on that we made a conclusion.

Q. You did not know whether or not there were import restrictions or not in Australia on June 1, 1959?

A. I was told there were not.

Q. But you did not know personally?

A. There are many things I do not know personally.

Q. You had been told by your attorney?

A. Yes.

Q. And was that Mr. Curtis or Mr. McConnell or whom?

A. Mr. Curtis.

Q. In other words you were told that as to both countries you should start with June 1, 1959, because previous to that there had been import restrictions?

A. That is right.

Q. Are you aware, Mr. Kaplan, that your counsel, from the beginning of the trial in 1964, right down to October 20, 1965, has contended vigorously, orally and in his memorandum, that there were no import restrictions in England and Australia prior to June 1, 1959.

Mr. McConnell: Well, now, if we are going to get into what counsel did or did not do in this case, I think we are going far afield because this—.

The Court: I don't see that it is very profitable, but I am going to find out how closely this witness read your briefs and the complaint and everything, to see whether he knows the answer to that.

Your objection is overruled.

By the Witness:

A. May I have the question read?

(Question read.)

31 Mr. McConnell: Well, then, I make the further objection that I did not take any such position at all. I said there was no embargoes. I didn't say there were no restrictions. I never took that position in this court.

Tht Court: I haven't heard anybody so testify under oath, counsel, unless this witness so testifies, if he ever gets a chance to answer.

Read the question, Mr. Court Reporter.

(Question read.)

By the Witness:

A. No, I am not aware of that position.

The Court: All right, that takes care of that.

By Mr. Kayser:

Q. Well, if you knew, as you testified, that the import restrictions in England did not go off until June 8th, why did you start with June 1 as your damage period?

A. Because I don't think it makes any difference.

32 Q. Why not?

A. As I said, we thought that we could do this amount of business in this four-year period. Now, actually, my recollection of the consideration is like this: Our first judgment was that in our opinion we could get in England 50 per cent of the market portion that we got in the United States, and in Australia 25 per cent, and we prepared our claim on—

Mr. Kayser: I move to strike that. There is nothing in this record about 25 per cent in Australia.

Mr. McConnell: He is telling you why he made this estimate. You asked him a question.

Mr. Kayser: I asked him about England, why he started with June 1 when he says that he knew the embargo was off on June—

The Court: Confine yourself to England, Mr. Kaplan. That is the only thing before you.

The Witness: Yes, your Honor.

By the Witness:

A. Well, it was our first judgment that in Eng-

33 land—

By Mr. Kayser:

Q. Who is "we"?

A. Our management, our export people.

Q. No, no, I am asking your testimony.

Mr. McConnell: Your Honor, the man cannot answer the question. He gets another question, an interruption. I think it is fair to the witness to let him answer the question first.

Mr. Kayser: And he gets a great deal of hearsay—

The Court: No, he can withdraw a question. This is cross-examination. You can do what you want when you get him back.

By Mr. Kayser:

Q. I asked you why you took the June 1, 1959, date in England if as you testified you knew that the import restriction continued until June 8th.

34 Mr. McConnell: I object to it as argumentative.

The Court: It isn't argumentative and I think the witness was making a responsive answer until all of the outburst occurred.

Go back and answer the question over again as you started to, or change your answer, I don't care which you do.

By the Witness:

A. My answer was that I didn't feel that it made any difference. On our premise that we were taking a whole four year period, in our opinion one week or one month did not make any effective difference.

By Mr. Kayser:

Q. Well, as concerns this four year period, exactly what do you say you were claiming? Were you claiming a certain percentage of the English market, or what were you claiming?

A. Well, I started to tell you our processes of consideration and judgment; we held numerous conferences, and as a result of the research that we did and our experience

35 we came to the conclusion that in England we could obtain fifty per cent of the market share that we did in the United States, considering the fact that we were starting from scratch on June 1, 1959.

A claim was prepared on that basis and upon examining the claim we felt that it did not give due respect to the fact that we were starting cold on June 1, 1959, and at that time we—it was our judgment that we should take a smaller market share, and in examining the relationship of the

number of units that we claimed we could sell in this four year period, which was something like 300,000 units out of a total industry sales of almost seven million, we felt that that was reasonable considering all the facts involved.

36 By Mr. Kayser:

Q. Do I understand that starting—

The Court: You are talking now about television in England, as I understand it.

The Witness: Television, that's right.

The Court: Go ahead. I mean, there are two things.

The Witness: Yes. And there was a similar consideration with respect to radio.

By Mr. Kayser:

Q. My questions have been addressed to television. You say taking into consideration the fact that you were starting cold. Do I understand now that it was your assumption starting with zero, you would have a gradually rising market?

A. Yes.

Q. How large a market did you assume you would have during the last seven months of 1959?

A. We didn't—we didn't attack it that way, Mr. Kayser.

Q. How large a market did you assume you would have in 1960?

A. We didn't attack it that way, Mr. Kayser.

Q. How about 1961?

37 A. The same answer.

Q. '62?

A. The same answer.

Q. The first five months of 1963?

A. Mr. Kayser, I will repeat, that we felt the relationship of the 300,000 units that were the result of this formula as compared to the total business done in that period was conservatively attainable.

Q. Now, is it your testimony that you estimated that starting from zero that with a rising market in the four-year period, you would sell a total of 300,000 television sets?

A. In the four-year period, yes, sir.

Q. And how much of that during the first five months, or the last five months—

A. We didn't make—

Q. If you don't know how much in any one of the periods, how do you get to the total?

A. Because the relationship of the total television that we expected to sell was very conservative and reasonable in relation to the total amount of business done in the country.

Q. But you had no breakdown at all?

38 A. No, we didn't. We didn't attack it that way.

Q. I assume that management knew that your Mr. Stevenson was going to testify here in this case in February, '64.

A. I don't know that we knew that or not.

Q. You didn't? You made some comment about the fact that you did not have a distributor in England prior to June, 1959. When did you have a distributor in England?

A. I think that he came with us some time in 1959.

Q. Do you know when?

A. No, I don't.

Q. You say you didn't know that Mr. Willis Stevenson was going to testify here in February, 1964?

A. I'm not sure I understand your question.

Q. I asked whether you knew that Mr. Willis Stevenson was to be a witness in this case in the trial in February, 1964?

The Court: Are you asking whether he knew whether he was going to testify prior to the time he testified?

Mr. Kayser: Yes.

The Court: All right.

By Mr. Kayser:

Q. Yes. Did you know—did you know prior to the time that Mr. Willis Stevenson testified in February 1964, that he was to be a witness?

A. I don't recall, Mr. Kayser. All I knew is that he prepared the damage claim.

Q. But you knew he prepared the damage claim?

A. Yes.

Q. I'm handing you, Mr. Kaplan, a typed copy of a sheet from Zenith's Exhibit 220 entitled "Lost Sales and Lost Profits in Television and Radio in Canada, United Kingdom, and Australia, June 1, 1959, to May 31, 1963."

I'm also handing you a typed sheet, Zenith's Exhibit 218, "Zenith's Share of Domestic Market."

I don't believe the Court has a copy of 218.

The Court: I have one back in my archives, but I haven't got one here.

(Document tendered.)

The Court: Thank you.

By Mr. Kayser:

Q. Do you recognize this as part of the exhibit which Mr. Stevenson prepared?

A. I think that they are the exhibits that he prepared.

Q. And it is true, is it not, that as to each of the three countries—Canada, United Kinkdom, and Australia—referring now to Exhibit 220, you have a showing there of the market in units for radio and television for each of five periods, 1959, '60, '61, '62, '63?

A. I don't have the exhibit marked 220.

Q. Pardon me?

A. I don't have an exhibit marked 220.

Q. It is the sheet which is headed "Lost Sales and Lost Profits," et cetera.

Mr. McConnell: Maybe I better look at it, too.

By Mr. Kayser:

Q. I will restate the question.

41 Mr. McConnell: Well, if you don't mind, I would rather he testified from the court exhibit that is here.

Mr. Kayser: All right.

The Court: You have indicated a desire to restate your question. Will you do so.

By Mr. Kayser:

Q. All right. I say it's true, is it not, that on this Exhibit 220 which you now have before you, as to all three countries there is shown for radio and television, for each of the five periods, first, the total sales or what purports to be the total sales of sets in those countries?

A. Yes.

Q. Next you have Zenith's share of market, a percentage, and that purports to show the share of market which Zenith could have obtained in those countries?

A. Yes.

Q. And then that same figure—that same statistic is shown in terms of number of sets; is that right?

A. Yes.

42 Q. First in percentage and then in number of sets.

A. Yes.

Q. Then you show the actual sales.

A. Yes.

Q. And the lost sales in the market?

A. That's right.

Q. Then for each period specifically, you show an average selling price during that period by Zenith to Canada. In the case of '59, for example, it's $148.73 for television sets.

A. That's right.

Q. Then you next show the total amount in terms of dollars, and then profit percentage, and then lost profit, on lost sales; is that right?

A. That's right.

Q. Now, the final column shows—for example, in the case of the United Kingdom on television, it shown an exact lost profit for the last five months of 1959 of $1,517,357; right?

A. I'm sorry, I lost you there.

Q. United Kingdom, television—

The Court: The last column to the right, the third item down from the top.

By Mr. Kayser:

43 Q. Yes. It shows $1,517,357 as your lost profit on lost sales in the United Kingdom for the last seven months of 1959; right?

A. That's right.

Q. Do I understand, then, that it is Zenith's position that starting from June 1, 1959, Zenith could during these seven months of '59, have sold enough television sets so that its profits for the seven months would have been that figure, $1,517,357?

A. Well, that's not exactly our position, Mr. Kayser. As I explained to you, we made our judgment as to the total amount of business that we could do in the four-year period. And we felt that it was conservative and reasonable that we could, in the four-year period, sell 300,000 television sets out of a total market of six million-eight. In Australia it was 23,000 television sets out of a total market of 1,311,000.

44 Now, we have to admit that this was a judgment, an estimate. And in reducing this to a claim, then we tried to, where possible, relate it to facts that we knew. Now, we knew what the selling price and the average

mix was of sets that we sold into Canada. So rather than introduce another unknown, we used that. We knew what the average selling price of radio sets into Canada was in this period. And rather than introduce another unknown, we used that.

Had we used, for instance, our export average, it would have been forty per cent higher. We also used our actual cost experience in our Canadian operation to the best extent that we knew, and included in this was a portrait of a company getting started into business. And as a result of getting started into business in Canada, we spent ten per cent in advertising in the first nineteen months period —ten to eleven per cent. I forget the figure now. And that was graduaily—

The Court: Ten to eleven per cent of what?

The Witness: Of our billings, your Honor.

The Court: All right. That clears that up.

By Mr. Kayser:

Q. During what period was that?

A. This is the first nineteen months.

Q. You mean—what nineteen months are you referring to?

A. I'm referring to the nineteen months starting June 1, 1959 to December 31, 1960.

Q. In Canada?

A. In Canada. And we applied those percentages in our profit computation in England and Australia because those were facts that we knew. These were historical facts.

Q. I thought you started in Canada before June 1, 1959.

A. But that is the basis—we did start prior to that, so we probably had higher advertising expenses prior to that.

Q. Prior to June 1, 1959?

A. That's right.

Q. Well, I gather then that it is your testimony that the $1,517,357 is not the amount of profit that you
46 would have made in England during the last seven months of 1959?

A. I'm saying that this is a proper method of computation of our damages.

Q. I'm asking whether or not $1,517,357 is the profit which you claim you could have gotten in England from television, starting from scratch on June 1, 1959 to the end of the year.

A. Well, if we continued and arbitrarily allocated in that period that amount of merchandise—and it could very well have been; we only say we are not capable of doing that—then that would have been the amount of lost profits.

Mr. Kayser: Read that answer again.

(Answer read.)

By Mr. Kayser:

Q. You are not capable of doing what?

A. Making that specific and exact allocation.

Q. Why aren't you capable of making that specific and exact allocation?

A. Well, I don't believe that any business experience would enable you to reconstruct exactly what might have happened. You have to use your best business judgment.

And we felt that to try to allocate this to short periods
47 within the damage period just added confusion.

Q. That's exactly what you did, though, isn't it?

A. No, it's not what we did.

Q. Well, this Exhibit 220, if I'm not mistaken—this is a Zenith Exhibit, isn't it?

A. That's right.

Q. Well, I still haven't got an answer. Is it Zenith's position that it could have obtained a profit in the last seven months of 1959, starting from scratch, of $1,517,357 from

television sales, starting from scratch on June 1 and with not even a distributor on that date?

48 Mr. McConnell: Well, we have our position on record here as far as Zenith is concerned. If you want to ask this witness what his position is, that's all right.

Mr. Kayser: Well—

Mr. McConnell: I have been trying to maintain Zenith's position for a long time, and I am sure you are familiar with it. I'm sure the Court is too.

The Court: Well, all he has told you so far is what this witness' position is—

Mr. Kayser: Well, he speaks for the corporation, I assume.

The Court: I assume that this corporation has a lot of spokesmen, and some that speak with a louder voice than he and maybe the chairman of the board speaks with a louder voice than he. And I assume that in my courtroom the loudest voice is their counsel.

Mr. McConnell: Thank you, your Honor.

By the Witness:

A. My position, Mr. Kayser, is that $8,079,859 is
49 the damages for the four-year period, and any interim computations are merely a means of getting to that point.

By Mr. Kayser:

Q. Well, you still haven't answered the question. Is it Zenith's position, or your position, or your conglomerate position that for the last seven months of 1959, Zenith, starting from scratch on June 1, 1959 could have made a profit of $1,517,357 from the sale of television sets, starting from scratch?

A. If we took the position that we could sell 63,210 units in that exact seven-month period, that would be so. We have not taken that position except for the purpose of an

accounting computation, which I say is better off considered in its entirety.

Q. This is an accounting computation in this Exhibit 220; is that it?

A. That's right.

Q. Was your figure in Canada also an accounting computation?

A. No, that's historical.

Q. Oh, Canada is historical, but England and Australia are an accounting—is it a visualization? Would you consider that to be a fair word?

Mr. McConnell: Is that a question?

Mr. Kayser: Yes.

The Witness: I don't know what you mean.

The Court: That makes him ask you another question that you can understand, so go ahead.

Mr. Kayser: Will you read the question back, please.

The Court: I mean, I don't know why you—

Mr. Kayser: Well, strike the question.

The Court: He says he doesn't know what it means. The next stage of the proceedings is to ask another question.

Mr. Kayser: All right.

By Mr. Kayser:

Q. In other words, then, it is your testimony that your figures as to Canada were historical and assumed that Zenith would have been in business there fore many, many years. But in the case of England and Australia, your figures are not intended to be historical, and are based on the assumption that they started June 1, 1959?

A. Well, you have actually got several questions there, Mr. Kayser. These figures—our position is that starting cold on June 1, 1959, we could have sold in the ensuing four years in England 300,000 television sets out of a total of 6,800,000.

Our position is that we could not have sold 600,000, which was our first consideration and our first judgment.

By Mr. Kayser:

Q. Where in this record, Mr. Kaplan, did you tell the Court that Canada was historical and England and Australia was not, as concerns Exhibit 220?

Mr. McConnell: I object to that.

The Court: The objection is sustained unless there is some indication that witness is familiar with the record.

52 By Mr. Kayser:

Q. Well, you gave the figures to Mr. Stevenson, did you not, that he used?

A. I gave him the share of market, yes.

Mr. Kayser: Excuse me. We have an exhibit here, or a chart, which we would like the witness to take a look at.

By Mr. Kayser:

Q. Do you know what was done in England starting June 1, 1959, which formed the basis of your supposition that you could have obtained the share of the market?

A. I'm not sure I understand that question.

Q. Do you know what steps were taken to sell the sets which are shown here as having been sold during the four-year period?

A. Well, there was a distributor in England who sold radios—Zenith radio sets.

Q. Mr. Kaplan, I have here a chart which we have prepared, which shows in bar form the number of television sets in England which Zenith asserted it could have sold during the four-year period. Now, with this Exhibit 220—

53 Mr. McConnell: Well, now, wait a minute. I'm going to object to any charts. We don't know how they are prepared or what they are from.

The Court: I think the chart ought to be explained to the witness if he is going to be asked to—

Mr. Kayser: Yes.

Your Honor, Mr. Kaplan, Mr. McConnell, we have had this prepared. It shows in red the number of television sets—

The Court: 63,210 appears to be the seven-month figure from my chart.

Mr. Kayser: Yes.

The Court: And 81 seems to be the figure for 1960 and 66 for '61, and 59,000 for the year '62, and 30,000 for—

Mr. Kayser: For '63, the first five months.

By Mr. Kayser:

Q. Now, do I understand that this is intended as a portrayal—that these figures are intended as a portrayal of what Zenith could have done in England in televi-
54 sion starting from scratch on June 1, 1959?

A. No, that is not. That is not what I just testified to.

Q. In other words, these figures here are not the figures which you now say are the estimate which you took into account in reaching the total of eight million dollars which was shown in Exhibit 220?

A. Those figures are the figures used in the damage computation, because we had to relate some figures to our accounting and cost history.

Q. Those are not the number of sets which you claim you could have sold?

A. I told you that our—

Q. On a per-period basis?

Mr. McConnell: Wait a minute. Let him answer the question, please.

By the Witness:

A. I told you, Mr. Kayser, how our judgment was arrived at. Now, in order to have the least amount of unknowns in our equation, we then tried to relate a certain amount of business to each one of these periods, because we had cost figures for those periods. But that is not necessarily the way we claim that we might have done the business.

By Mr. Kayser:

Q. But these were the figures you presented to the Court; right?

A. For a mathematical computation.

Q. And these were the figures that were totaled in your finding in this case for damages; right?

A. They are in the mathematical computation.

Q. But you can't tell us how much—how high that bar should go up for 1959 under your computations?

A. No.

Q. Or for any other year?

A. That's right.

Q. But in thet case of Canada, if we had a similar chart, the bar would show a historical figure; is that right?

A. Well, in Canada we agreed that we had a different set of assumptions.

Q. I asked the question whether in the case of Canada the figures would show a historical amount.

A. I'm sure that the word "historical" is the correct word. But Canada was based on a different background, a different set of assumptions, that we were not enjoined from doing business there by anything except the pool, and that we would have been doing business there for a great many years prior to the damage period.

The Court: Maybe at this time I will call a short recess on this. I have a couple of intervening matters. You

gentlemen take a five-minute recess and I will get to what I—

The Witness: May I leave the stand?

The Court: Surely, surely.

(Whereupon the Court gave attention to other matters on the call, after which the following further proceedings were had herein:)

57 The Court: You may resume the stand, Mr. Kaplan.

By Mr. Kayser:

Q. Mr. Kaplan, under your theory of a gradually rising market, what percentage of the television market would Zenith have had to have—

The Court: This looks to me as though it wasn't a gradually rising—

Mr. Kayser: Well, under his newfound—what he is trying to tell us today, your Honor.

By Mr. Kayser:

Q. (Continuing.)—under the testimony that you have told us about this morning, you started from zero, you say, June 1, 1959; what percentage of the market do you say you would have had to have in the first five months of 1963 to give you your average?

A. I didn't say.

Q. Do you know?

A. No. I don't know because there was no way to know. We were prevented from doing business by the pool.

Q. No, I am speaking of these assumptions that you are engaging in.

58 What was your assumption?

A. Well, I don't—it doesn't seem to help. I have told you what our assumptions were.

Q. I have asked you a new question here: What your assumption was as to the percentage of the market you

would have had in the first five months of 1963 to get up to this average you are talking about.

A. I don't know.

Q. You don't know.

Couldn't you, if you were actually starting with a zero share, the assumption of a zero share of the market on June 1, 1959, and if you were actually starting or operating under the theory of an increasing market share over the five periods, couldn't you have given figures to show what that market—that assumed market share was during each of the five periods?

A. Could we have?

Q. Yes.

A. Well, I assume that you can do anything with mathematics, Mr. Kayser.

Q. Apparently so.

I have asked, could you have, if as you now say, you started with a—with the assumption of a zero share of the market on June 1, 1959, and ended up May 31, 1963, with some sort of total over-all average, couldn't you have shown the progression of that market year by year, period by period?

A. It would have been completely arbitrary.

Q. It would have been completely arbitrary?

A. It would have been completely arbitrary.

Q. What do you have to say of your Exhibit 220?

A. The Exhibit 220 is based on a percentage of what we did in the United States.

Now, actually, assuming that we started cold on June 1, 1959, it does not mean that on that day we would start to make blueprints to manufacture sets. There was plenty of advance notice that these import restrictions were going to be lifted, and we could have had during that period made arrangements for distribution. We could have made sets. We could have started them to England, and then we would

have had a long period of filling distributors' inventories and dealers' stores with samples, but this is writing a story that did not exist and couldn't exist.

60 Q. You said that your Exhibit 220 was based on your experience in the United States. How long had you—

A. Those fractions were based on the percentage—

Q. Yes. How long had you been selling radios in the United States prior to June 1, 1959?

A. Prior to June 1, 1959?

Q. Yes.

A. About thirty-six years.

Q. And how long had you been selling television sets?

A. Seventeen years—no, eleven years.

Q. And it was your United States experience that was projected in giving your figures as to Canada, England and Australia, was it not?

A. No, no, that is not the testimony.

Q. Didn't you in Canada show the same percentage for each of the five periods that you had in the United States for the same periods?

A. That is true for Canada.

Q. And didn't you in England show, in Exhibit 220, one quarter of the percentage for each period?

A. That is right.

61 Q. And ten per cent of that period for Australia?

A. But that took into consideration—

Q. I asked you—

Mr. McConnell: Let him answer.

Mr. Kayser: I am asking him if he showed that in Exhibit 220.

The Court: You cannot tell if he is not answering until he finishes his answer.

Mr. McConnell: I know, but he interjects. He interrupts his answer.

The Court: Well, I don't know why you are now protesting further when I have already ruled in your favor, Mr. McConnell.

Mr. McConnell: No, I am not, I am just stating my position.

The Court: I mean, you have stated your position and your position has been upheld and let's go on with it.

By the Witness:

A. I would have to have the question read.

The Court: I am sure that you would.

By Mr. Kayser:

Q. I asked whether it was not a fact that in Canada,
62 for each of the five periods, you showed exactly the same percentage of the Canadian market as you got in the United States.

A. That is true.

Q. And as to England you showed one quarter of the percentage of the English market as you got from the United States.

A. That is true.

Q. For each of the five periods?

A. That is true.

Q. And as to Australia for each of the five periods you showed ten per cent of the—one tenth of the percentage which you had obtained in the United States during the particular period.

A. That is true, but that was done because we had to have a basis of using the facts and costs that we had available so that everything was not a product of judgment.

Q. What was that again?

The Court: Read the answer, Mr. Comeau?

(Answer was read.)

By Mr. Kayser:

Q. Couldn't you have, on your cost—you couldn't
63 have given a four-year average?

A. I don't know that that would have produced the same results.

The Court: Well, the chart indicates to me that the price to dealers went down each year during the four-year period and the less they collected from the dealers the greater their profit went up. I mean, that is what that chart indicates to me.

The Witness: May I add something, your Honor.

The Court: I mean, I am just talking about the chart. The chart indicates that you were selling sets in 1963 for $128 against $148 in 1959, and that your profit margin increased each year that the cost to dealers went down. Doesn't the chart indicate that?

The Witness: Yes, sir.

The Court: All right, that is all I said.

64 By Mr. Kayser:

Q. Now, you have testified that you could, with this rising share of the market, have sold a total of 300,000, roughly, television sets in England during the four-year period.

The Court: That is his testimony.

Mr. Kayser: Right?

By the Witness:

A. I didn't use the words "rising share". I said that in the four-year period we felt that, conservatively and reasonably, we could have sold 300,000 out of 6,800,000 sets.

We could not tell you what week of what month we would get what share.

As a matter of fact, in the United States in different weeks and different months we get a different share than we do for the entire year.

By Mr. Kayser:

Q. But you did assume a gradually increasing number of sets year by year?

A. No, we assumed—my answer to you was that that would probably be the pattern, but it could very well be a high start in the stocking period and then a dip and
65 then a rise and then it could follow any pattern.

Q. Well, now, at the original trial you told the Court, did you not, that Zenith had actually sent to England sets, to your distributor, sets which had been converted to the English standards?

A. That is what I told the Court, yes.

The Court: And this exhibit indicates that there was one such set in 1960 and 21 in 1962 and 1961, and so forth. During a four-year period in England they sold 65 sets. That is what these figures shows.

By Mr. Kayser:

Q. These were sets converted to the English standards?

A. Not all of them, no, sir.

Q. Were any of them converted to the English standards?

A. Some of them were, yes.

Q. What was the English standard?

A. During a part of the period it was 405 lines, and during the latter part of the period, although it was still in the test, it was 625 lines.

66 Q. There never was any time during the damage period when there was a commercial broadcast of the 625-line transmission, was there?

A. It is my impression that it was a test transmission.

Q. I believe you also, in supporting your contentions in 1964, told the Court—I believe Mr. Wright did—that Zenith had sent parts and conversion kits to its English distributor, is that correct?

A. Did I testify to that?

Q. No. I asked you if it is a fact that you did?

A. I don't know.

Q. You don't know?

You also told the Court that your English distributor had converted sets for use in England in its back room, did you not?

A. That was my impression, that is right.

67 Q. That was your testimony, was it not?

The Court: I mean, somebody said that because I remember that. I don't know who it was, but I know that I heard it. I suppose the best way to determine that is to read the record, as to whether it was said and who said it.

By Mr. Kayser:

Q. This was at Page 846 of the record, where Mr. Dodds was asking you some questions about the requirements of the English system, and you said:

"Mr. Dodds, I would like to answer by saying that this difference is so profound that our distributor changes them in his back room."

The Court: I assume that you acknowledge that you said that, having heard the record.

By Mr. Kaiser:

Q. Do you recall that testimony?

A. Yes.

Q. Do you know, did Zenith ever, before June 1, 1963, send either Mr. Ramsey or United Mercantile Company, your distributor, any television sets which had been

68 converted to receive the 405-line transmission?

A. I don't know.

Q. You don't know?

A. No.

Q. Page 821, you were asked by your counsel:

"Well, let me ask you this, haven't you actually made sets of Zenith that can be used in the British market?

"Yes, we have."

The Court: What is the question, did he say that, or what?

Mr. Kayser: The answer is: "Yes, we have."

The Court: I mean, are you asking him now did he say that?

Mr. Kayser: I am asking him if he recalls that testimony.

The Witness: Yes, I recall it.

By Mr. Kayser:

Q. Do you recall whether those were sets that would receive the 405-line transmission?

A. Well, isn't that the reference in that testimony?

Q. I am asking you what the fact is.

69 A. I don't recall. That was a year and a half ago.

Q. You don't recall now whether Zenith ever made any sets which would receive the 405-line transmission.

A. That was not your question.

Q. Well, do you recall?

A. I think we had better get the question straightened out.

Q. I am asking you a question: Whether or not—

The Court: Do you now recall at this moment, regardless of what has occurred in the past in regard to testimony, whether you ever made any 405-line television sets for transportation to England.

Is that the question?

Mr. Kayser: Yes.

By the Witness:

A. It was my impression that they did.

By Mr. Kayser:

Q. Well, if I were to tell you that your British distributor says that no such sets ever were received, would that refresh your recollection?

70 Mr. McConnell: I object to counsel stating—he should also tell him that the British distributor said he never had a contract to ~~sell~~ televisions in England.

The Court: All I know is that he is asking him if his British representative said that, would that refresh his recollection. He could just as well have said, "Does this pencil refresh your recollection?"

Your objection is overruled.

That doesn't prove the fact that he is stating—

Mr. Kayser: I am aware of that, your Honor.

The Court: I was just trying to reassure Mr. McConnell in case that he was not aware of it, that it does not prove the fact.

Mr. McConnell: My only objection is, your Honor, that it assumes a fact which is not a fact.

The Court: Well, I mean, you may, when you get him back, use whatever you wish to use in the way of what this representative said to refresh his recollection and

71 couch it in your own terms.

If this were said, would that refresh your recollection? That is the only question before you. If this were said by whoever said it, would it refresh your recollection?

The answer to that is either yes or no.

The Witness: Well, I am not sure. I think the question was, would I be surprised.

Mr. Kayser: No, I asked whether that would refresh your recollection.

The Court: He asked would that refresh your recollection.

The Witness: Would—

The Court: Would the fact that this fellow said this, refresh your recollection? It may refresh it and it may not.

The Witness: No, it does not refresh my recollection.

The Court: All right, that answers the question.

72 By Mr. Kayser:

Q. Well, prior to June 1, 1963, did Zenith send to Mr. Ramsey or to United Mercantile any kits for the conversion of 525 line sets to the 405 line system?

A. I don't know.

Q. Prior to June 1, 1963, did Zenith ever send any instruction booklets or instructions of any kind to Mr. Ramsey for the adaptation of the 525 line system to the 405 line system?

A. I don't know.

Q. Well, prior to June 1, 1963, did Mr. Ramsey or United Mercantile ever convert any 525 line sets to the 405 line system?

A. I answered that it was my impression that they had.

Q. That was your impression that he had?

A. That is right.

Q. Would it refresh your recollection if I were to tell you that he testified that he had not.

A. Well, this is where we were.

Q. Yes, I know.

A. That does not refresh my recollection.

The Court: At least you understand the question
73 now without further explanation from the Court.

By Mr. Kayser:

Q. Isn't it a fact that the only television sets which Zenith ever sent to England, which had been converted to any other system, were sets which had been converted to the 625 line system?

A. I don't know.

Q. You don't know.

But I gather that we can agree that there was no commercial broadcast on the 625 line system until after June 1, 1963.

A. I said it was a test broadcast.

Q. Do you know of any country other than England that uses the 405 line transmission system?

A. I don't know of any.

Q. Do you know whether or not the 625 line system is used in a number of countries?

A. Yes, it is.

Q. Is it the most widely used transmission system today in the world?

A. No, our system is the most widely used.

Q. The 625 line system is used in a number of countries on the Continent?

74 A. It is used in some countries on the Continent. I don't know how many.

Q. Did you really know in February, 1964, what the comparative prices would have been during the four-year period of Zenith's sets sent overseas as against English sets?

A. Did we know?

Q. Did you know in February of 1964?

A. No, but we could make a pretty good computation.

Q. Did you know?

A. No, we did not know, so we had to use the figures that we did know.

Q. No, I asked you, did you know—

The Court: And the answer is that he did not know.

By Mr. Kayser:

Q. Did you know what had happened to the English market during the period of 1959 to 1963 in the way of volume of sales?

A. Yes.

75 Q. What had happened?

A. Well, I think that it was in 1959 they had a very big year, about 2,800,000 units, and it well off after that.

As you know, we had ordered and had available to us a market study of the English market and of the Australian market, and this was part of the background for our considerations and judgment.

Q. What was the date of your English market study?

A. I don't recall.

Q. Wasn't it April, 1959?

A. I don't know.

Q. You don't know?

The Court: What is April, 1959, what document?

Mr. Kayser: That is the date of the market study, at least which has been disclosed to us.

The Court: I see. I was wondering how that got into it.

Mr. Kayser: Well, the point is, before the four-year period.

76 By Mr. Kayser:

Q. What is the date of your Australian study?

A. I don't know.

Q. Did you actually have one made?

A. I said so, Mr. Kayser.

Q. All right, was it made by some sort of a market survey agency?

A. Yes.

Q. And do you know when?

A. I don't know the date.

Q. You testified that you started with June 1, 1959, as the date in Australia because that was the date the embargoes went off and the date that your counsel told you to use.

A. You will have to separate those questions, because they are both not applicable.

Q. All right, because that was the date the market restrictions went off.

A. No, I didn't testify as to that.

Q. You didn't?

The Court: You do have a tendency this morning, Mr. Kayser, to put two or three questions in one question.

77 I wish you would try and ask a simple question that this witness could answer yes or no and not have to qualify his answer because there is another question in the question.

Mr. Kayser: Yes, sir.

By Mr. Kayser:

Q. I show you, Mr. Kaplan, copies of documents from Zenith Exhibit 113, consisting of a bulletin dated March 28, 1960, by the foreign information service, copy of a letter by Mr. Peirels to the Trade Commissioner of Australia, dated April 21, 1960, and a copy of a letter dated July 18, 1960, from the Australian Government Trade Commissioner to Mr. Peirels, and I ask you to read those.

The Court: Take your time, Mr. Witness.

The Witness: Thank you, sir.

Mr. McConnell: Are those exhibits in the case?

Mr. Kayser: Yes, they were exhibits produced by Zenith Radio, Mr. McConnell.

Mr. McConnell: Have they got a number so that I can find them?

Mr. Kayser: Well, they were part of your bulk Exhibit No. 112, I am told.

78 Mr. McConnell: Is that the one you threw on the floor?

Mr. Kayser: No, no, it's not, Mr. McConnell. The one I threw on the floor is the one which your witness is, this morning, throwing into the waste basket.

Mr. McConnell: Well, we'll see if he has thrown it in the waste basket.

Can I see it, Mr. Kaplan, before you answer questions on it.

The Witness: It's pretty bad copy.

Mr. Kayser: I'm told, Mr. McConnell, that that is out of Defendant's Exhibit 215.

By Mr. Kayser:

Q. Have you read it?

A. Yes.

Q. Who is Mr. Peirels that is referred to—shown as the writer of the April 21, 1960 letter?

A. He signs himself as assistant sales manager of the International Division.

The Court: I'm still in the dark, because it doesn't say the International Division of what.

79 Mr. Kayser: Yes.

The Witness: Zenith Sales Corporation.

The Court: All right.

By Mr. Kayser:

Q. Zenith Sales Corporation. Now, I note in that letter, it says that,

> "The Foreign Information Service has advised us with their bulletin of March 28th that a further relaxation of import restrictions has been announced by the Australian government. It was stated that about ninety per cent of all imports entering Australia are now free from import licensing and banks in Australia are free to make exchange available for such imports simply on evidence of shipment. We are manufacturers of electronic products, radios, television receivers, and record playing instruments which we offer in the form of completely assembled units,

and also in the form of units of parts for local assembly."

80 Now, on that date, was Zenith Radio Corporation as yet ready to go into the Australian market? I am speaking of the date of April 21, 1960.

A. Of course.

Q. Did Zenith Radio Corporation know, at that time, whether or not there were import restrictions still existing in Australia?

A. Well, Mr. Peirels' letter refers to a further relaxation, which obviously indicates a previous relaxation.

In addition to that, it is my recollection that we had been making 625 line kits for some of our distributors, and that we could have been in business at any time minus the pool.

Q. Did you at that time know the extent of the restrictions in Australia?

A. Did I at what time now?

Q. On April 21, 1960.

A. Well, that's not a part of my everyday function. I may have know it or I may not have. I don't know.

Q. You may or you may not have? Yet you gave the estimates that you gave for Australia not knowing

81 whether or not there were any import restrictions?

A. Well, you asked me if I knew it in 1960.

Q. Yes.

A. Those estimates were made in 1963 and '64.

Q. Did you know in 19—did Zenith know in 1960 whether or not there were import restrictions?

A. Did Zenith know?

Q. Yes.

A. I'm sure they did, yes.

Q. Did Zenith know—or did you know?

A. I don't know.

Q. You were told to use the June 1, 1959 date, and

you didn't know whether or not there were any restrictions after that or not; is that right?

A. I was told there were not.

The Court: That is governmental restrictions?

The Witness: That is right.

82 By Mr. Kayser:

Q. Who else in your organization did you consult with in connection with these estimates that you gave as to England and Australia?

A. Mr. Migul, the international trade manager, Mr. Wright. I can't remember everybody else. We also discussed it with people who were not in our organization.

Mr. Kayser: Well, I think I will stop my cross-examination and wait for the next witness, your Honor.

The Court: Have you any redirect, Mr. McConnell?

Mr. McConnell: Yes, your Honor.

The Court: You may proceed with it.

Redirect Examination by Mr. McConnell.

Q. Did I leave that Exhibit 220 up there?

A. Yes.

Q. Will you turn to Exhibit 220, which we have discussed here, where there is a computation of the amount of damage. Do you find that?

A. Yes.

83 The Court: There are six computations, aren't there? There is one at the bottom of the page, and then above that on the righthand side there are six others.

By Mr. McConnell:

Q. Well, do you have one sheet where all the computations—

A. This is it.

Q. And that is the first page of Exhibit 220.

Now, Mr. Kaplan, you are not only an executive officer of Zenith Radio Corporation, you are also an accountant, are you not?

A. By training and experience, yes.

Q. You are familiar with accounting practices?

A. Yes.

Q. Is there any accounting reason for allocating those different amounts in the different columns on that damage computation?

A. Well, the basic accounting reason is, as I have explained, is that we wanted to eliminate from the computation as many unknowns and judgment factors as we could.

And the things that we knew were our costs in these 84 periods, our average selling prices in these periods to Canada—and we knew the pattern of the business in the United States as to our penetration of the market, and we had previously made judgments as to what portion of that penetration could be attained in these other markets considering, for instance, that in the United Kingdom and Australia we didn't have a previous market position, and there were tariffs and transportation charges and distances and differences, for instance, in the technical qualifications of the instrument.

But the differences in the specifications would merely be handled by making these products on a different line, because the quantities were sufficient to support such a line. It would not be done—it would not be done by conversion at destination.

Q. Now, you refer in there to average selling prices, and you have used the Canadian price, average selling price; is that correct?

A. That's right.

Q. You didn't have any English selling price on television sets, did you?

A. It would have to be arbitrarily constructed.

85 Q. Well, you didn't have one.

A. That's right.

Q. But you did have a Canadian one?

A. That's right.

Q. And you didn't have a selling price in England because you couldn't sell sets there regardless of Government restrictions; isn't that true?

A. That's true.

Q. And why?

A. Because of the actions of the pool.

Q. So that you are trying to reconstruct here, as best you can, as an accountant and a business executive, a market which you were prevented from having; is that right?

A. That's correct.

Q. And the uncertainties which you have indicated in this computation arise because of that fact?

A. That's right.

Q. Now, would you say as an accountant that the method of presentation of the computation of this damage reaches a fairer result by virtue of allocating the busi-

86 ness to particular periods rather than averaging it over a whole period?

A. I would say, Mr. McConnell, that this is an acceptable method of doing it, and reaches such a fair result.

Q. You are not purporting to say that in any given hour, or in any given day or in any given week, you would have sold X number of television sets?

A. You can't.

Q. No one can, can they?

A. That's right.

Q. Because the experience is not available, isn't that right?

A. That's correct.

87 Q. Now, you were examined at some length about different lines, 625-line and 405-line television sets. You had no occasion to make a 405-line plus a 625-line set, did you?

A. We had no business in that type of receiver, except in the 625 we did have a business.

Q. But you had no business in England because of the pool, is that right?

A. That's correct.

Q. So there was no occasion for making a 405-line and a 625-line, was there?

A. Well, there was no compelling reason to do so, yes.

Q. And actually, your distributor, or so-called distributor, had no contract to sell television sets; isn't that true?

A. That's true.

Q. Now, you are familiar with production methods at Zenith Radio Corporation as an executive officer, are you not?

A. Yes, sir.

Q. If you had had the business in England, could Zenith Radio have put together 405 lines and 625 lines in a set on one assembly line for export to England?

88 A. There is no question about it.

Q. Actually, the competitors that you would have had in England do that, do they not? Put the 405-line and the 625-line in one set?

A. Recently they do, yes.

Q. And that is because they have two different systems of transmission, isn't it?

A. That's correct.

Q. You spoke of kits, 625-line kits. Does Zenith make such kits at the present time?

A. Yes, sir.

Q. And they have made them for how long a time? Back during this damage period?

A. At least since 1960, and I think prior to that.

Q. And they export those kits where?

A. They export them to Spain and to other countries, but I can't name them now.

Q. In answer to one of Mr. Kayser's questions, you said that you not only consulted people in your own organization, but that you had also consulted people outside your organization. Who were you referring to?

89 A. Well, we were referring to Mr. Beane, who was a manufacturer in Australia.

Q. Is he with the Stromberg-Carlson Company?

A. That's right. We were referring to Mr. Webb of the Rola Company in Australia, that was a component supplier there, and with whom we did business in other areas.

Q. Did you talk to Mr. Clarkson at any time, or did you know about Mr. Clarkson of Admiral?

A. I don't recall.

Q. Anybody else that you talked to?

A. I can't think of them now, Mr. McConnell.

Mr. McConnell: I have no further questions, your Honor.

The Court: Anything further?

Mr. Kayser: Well, I have a couple of questions, your Honor.

The Court: Limited to the redirect.

Recross Examination by Mr. Kayser.

Q. Speaking as an accountant, Mr. Kaplan, I gather you are now saying that you can figure an over-all average for a four-year period; is that right?

90 A. I'm not sure. I would have to consider that. I'm not sure that you could factor, in all these differ-

ences—for instance, there is the difference of the heavy advertising at the beginning of the period. There is these differences in average prices. There is differences in cost, because you are making different products in different parts of it. There is differences in Zenith's cost because our volume changes, and these all are reflected in here, and this is considered as incremental business. So I'm not sure that an average would be meaningful.

91 Q. Well, isn't it your testimony this morning—or am I entirely mistaken—that you are now saying that Zenith's damage is based on an overall average for four years?

A. I was talking about share of the market, Mr. Kayser.

Q. You are talking about an overall share of the market for four years?

A. Yes, that's right.

Q. You can't figure an overall share of the market for four years; is that right?

A. Well, Mr. Kayser, we are being asked here to construct a business that didn't exist because it couldn't exist. And rather than try to allocate a certain amount of business to a month, or a year, or a day, we have felt—and I told you that we made several judgments and discarded some of them, in the interest of giving full respect to the fact that we were just starting into business, that there were the problems of doing business in these countries, the distances and the tariffs. For instance, in Australia it's obvious that any manufacturer that wanted to, with our experience and our acceptance and our quality,

92 could sell 23,000 sets out of 1,300,000 in the four-year period. But if you asked me what they could sell in September, I couldn't tell you.

Q. But you say you can figure how much you can sell in four years?

A. Yes.

Q. Can you figure how much you can sell in two years?

A. I might.

Q. Can you figure how much you could sell in one year?

A. I might, but in each case, then, you would be introducing an additional element of judgment.

Q. Could you figure out how much you could sell in seven months?

A. I don't know. I would say this: That those figures would not be as good as the overall four-year period.

Q. In any event, the figures that Mr. Stevenson presented to this Court were based on the year period and part of the year period.

A. Mr. Stevenson was not concerned with the share of the market. That was given to him as the result of our conferences and our judgments.

93 Q. But the figures which he presented were on a year's basis.

A. In order to take advantage of the known historical facts, so that everything was not a matter of judgment.

Q. But they were on a year basis?

A. Yes, they were.

Mr. Kayser: That's all.

The Court: Mr. Kaplan, going back—have you got 220 before you?

The Witness: Yes, sir.

The Court: Going back to the top figure, Canadian television sales, column 2 which has the per cent of the market, I would assume to reach—well, first of all, you figure your per cent of the market in Canada with the 15.6 per cent because that was your per cent in America?

The Witness: Yes, sir.

The Court: And going down to the final figure of 21.7 per cent, that was your figure in America so you figured that in Canada?

The Witness: Yes, your Honor.

94 The Court: I assume that if in starting in the new countries, the first year you hadn't—the first two years hadn't reached 15.6 or 17.5, that in the last year you would have to have had to exceed 21.7 in order to make your figures come out even; is that true?

The Witness: Well, I assume you are referring to 25 per cent or 21 per cent or 10 per cent.

95 The Court: Well, that's right. Well, let's go down to the Australian figure, 1.562, and it goes up to 2.171. If you didn't make it the first two years, why, then, you would have to of necessity increase that percentage figure in the last two; right?

The Witness: That is right.

The Court: All right. That is my only question.

Mr. McConnell: Let me ask one more question.

The Court: Go ahead.

Redirect Examination by Mr. McConnell.

Q. Assuming now we are starting cold and from scratch in England, you spoke in your cross-examination of getting sets into dealer's hands so that you could sell something in England. Would that tend to increase that first year's amount?

A. Oh, yes.

Q. Over your estimated percentage?

A. Yes. That would be a stocking period that might not necessarily be reflected in the same rate of sales

96 until a period of experience had been built up.

Q. Well, to put it another way, to get the pipe full of products which is being shipped into that market, you would have to have a larger amount of product in the first opening period sold to your distributors?

A. That is correct.

Mr. McConnell: I have no further questions.

The Court: All right. Step down.

(Witness excused.)

The Court: I doubt, perhaps, if anything fruitful could be accomplished in five minutes with the next witness. Maybe we ought to recess until 2:00 o'clock.

Mr. McConnell: Thank you, your Honor.

(Whereupon, a recess was taken to 2:00 o'clock p.m. of the same day, November 22, 1965.)

97 Before the Hon. Richard B. Austin,
Monday, November 22, 1965,
2:00 o'clock, p.m.

The hearing was resumed pursuant to recess.

Present:

Same as before.

98 The Clerk: Hazeltine v. Zenith.

Mr. McConnell: Mr. Wright, will you take the stand.

The Court: This witness has heretofore been sworn in the other hearing.

Mr. McConnell: That is correct.

The Court: And he realizes that he is still under oath?

Mr. Wright: Yes.

The Court: All right, go ahead.

JOSEPH S. WRIGHT, called as a witness on behalf of the Defendant, having been previously duly sworn, was examined and testified as follows:

Direct Examination by Mr. McConnell.

Q. You are the same Mr. Wright that heretofore testified at the trial of this case?

A. I am.

Q. I show you a document which has been marked in

evidence here as Defendant's Exhibit 220. Did you have anything to do with the preparation of that document?

99 A. I had nothing to do with the physical preparation. I had something to do with the decisions as to some of the factors that were taken into account in its preparation.

Q. Did you concur in the percentages of market that were used in the computations that were shown in that document in England and Australia?

A. Yes.

Q. Now, in the use of those percentages which are shown in the computations in that document, Exhibit 220, did you assume that Zenith would have a mature market, or did you assume that it would start from scratch in the damage period in England and in Australia?

A. I assumed that we would be starting from scratch.

Mr. McConnell: You may cross-examine.

100 *Cross-Examination by Mr. Kayser.*

Q. Mr. Wright, what did you assume as concerns Canada?

A. I assumed that insofar as Canada was concerned, that we would have had a going market there.

The Court: But for the pool?

The Witness: But for the pool, yes, sir; yes, sir.

By Mr. Kayser:

Q. You assumed that you would, on June 1, 1959, have an established market in Canada?

A. Yes, sir, but for the pool.

Q. But you assumed that you would be starting at the point of zero on June 1, 1959, in England and Australia?

A. Yes, sir.

Q. Why did you assume that as contrasted to Canada?

A. Well, I was aware that there were requirements of

obtaining import licenses in England and Australia up to about that point.

Q. What did you understand the effect of those
101 requirements for import licenses to be?

A. I understood the effect of them to be that it was difficult to carry on an extensive business with the requirement of such licenses.

Q. Difficult but not impossible?

A. That is correct.

Q. In other words, you understood that on June 1, 1959, and prior to that time, it was possible to get licenses to import completed radio and television sets from the United States into England, for example?

A. Well, I—when we made this computation, we did not assume and I did not assume that we would have any going business at that time. I did—however, I did not have the understanding that it was impossible to do any business in the face of requirements of export licensing.

Q. You assumed that you would have no going business, but you also assumed that it would have been possible previous to that date to import completed radio and television sets?

A. Well, yes. And the reason I say that is that in other markets where we have the same difficulties of import licensing but where we can attack the problem and
102 address ourselves to it, particularly with strong local people who are interested in handling our goods, we find that we do get import licenses despite the fact that these restrictions exist. In England we had no opportunity to try to do that.

Q. I'm asking what you assumed, Mr. Wright. Did you assume that you could have gotten in television sets into England, or that you could not?

A. Why, I knew that we couldn't get them into England because of the existence of this patent pool thing.

Q. I am—all right. Did you assume that you could get television sets into England despite import restrictions?

A. Well, I'm not sure I understand the question, but we made this assumption on the basis that we would not be importing prior to that date, but—

Q. Excuse me—

Mr. McConnell: Let him answer the question please.

Mr. Kayser: Yes.

By the Witness:

103 A. (Continuing.) —but in my own mind, I had not assumed that this amounted to an embargo, that we couldn't—lacking the other restrictions, not have done any business at all. I'm telling you now what was in my mind at the time this exhibit was prepared, Mr. Kayser.

By Mr. Kayser:

Q. I'm asking whether or not you assumed that the governmental import restrictions would have kept you out prior to June 1.

A. I assumed that they would certainly make it quite difficult to do any sizable business before that time.

104 Q. Did you assume that they would keep you out entirely?

A. Entirely?

Q. Yes.

A. No.

Q. What volume of business did you assume that you could have gotten in over import restrictions?

A. We assumed here in this, Mr. Kayser, that we would have gotten none.

Q. In other words, you assumed that under the import restrictions you could get in no sets prior to June 1, 1959?

A. That was the assumption on which this Exhibit was prepared.

Q. You made the same assumption as to radio in England?

A. Yes,

Q. You made the same assumption as to television in Australia?

A. Yes.

Q. You made the same assumption as to radio in Australia?

A. Yes.

Q. You are president of Zenith?

A. Yes, sir.

105 Q. And you were previously executive vice president?

A. Yes, sir.

Q. And previous to that you were—you came in as general counsel?

A. I think I came in as assistant general counsel originally.

Q. You became general counsel?

A. Yes, sir.

Q. Were you aware of the steps being taken by Zenith to prosecute this case?

A. I'm sorry, I didn't get the last part.

Q. I will rephrase it. Were you aware of the fact that Zenith had taken the position right up to October 20, 1964, that there were no import restrictions which would have kept Zenith from importing radio and television into England and Australia?

Mr. McConnell: I object to that. That wasn't the position taken—

The Court: I mean, merely because Mr. Kayser says in his question that that was the position doesn't prove it to be so, and your objection is overruled.

106 By the Witness:

A. I was not aware of that position.

By Mr. Kayser:

Q. Were you aware of the fact that Hazeltine Research and Zenith both took depositions in England and Australia on the question of whether or not there were import restrictions?

A. Yes, that was my understanding.

Q. And were you aware of the fact that Zenith was taking the position that there was no such import restrictions?

Mr. McConnell: And I object. It assumes that we took that position. It never was our position.

The Court: You can reiterate it, and he can reiterate it in his question, and that doesn't commit either one of you, and the objection is overruled.

The Witness: May I have the question again, please. I'm sorry.

The Court: I can understand why. Don't apologize. Read the question.

(Question read.)

By the Witness:

107 A. No, I was not.

By Mr. Kayser:

Q. But you did—you say now you did testify in February, 1964 that you started with a June 1, 1959 date in England and Australia because of restrictions on imports?

Mr. McConnell: I object to that. There is no such testimony in the record.

The Court: If what you are seeking to do is impeach him, you ought to read the question which you consider impeaching. I don't know what you are trying to do.

The Witness: May I have the question?

The Court: Are you referring back to some prior testimony?

Mr. Kayser: I'm trying to show, your Honor, a great inconsistency between what is said and what was done.

The Court: I mean the way to show that is to let him know what he said, and maybe call it forcefully to my attention at the proper time in regard to what he said then and what he says now. The objection to the form of this question is sustained.

108 By Mr. Kayser:

Q. Do you recall, Mr. Wright, your testimony in February, 1964?

A. I recall some parts of it, Mr. Kayser. I don't recall it all.

Q. Do you recall that you testified as concerns Canada that Zenith had been kept out of Canada for a great many years prior to 1959?

A. Yes, I believe I testified to that effect.

Q. Do you recall similar testimony as to England?

A. Yes, sir.

Q. And as to Australia?

A. Yes, sir.

Q. Now, you also testified, as I recall, on the damage issue, that you believed, based upon your experience in the U. S., that but for alleged pool restrictions, you could have gotten the same share of the market in Canada?

A. Yes, as in the United States, I believe I stated.

Q. Yes. Now, in the United States you had been in the radio business for a great many years, had you

109 not, or Zenith had?

A. Yes.

Q. And also had been in television since about 1948?

A. Yes, I believe the latter part of 1948 was our first entry into television.

Q. And you participated in the determination of the percentages which would be given to Mr. Stevenson and which were transposed into Exhibit 220?

A. I did.

Q. I believe you told your counsel that you had concurred in those percentages?

A. Yes.

Q. And in the case of Canada, you started in 1959 with the same percentage of the Canadian market as you had in the United States in '59?

A. I believe that's correct, yes.

Q. And in England you started with one-quarter of that percentage?

A. Yes, that's correct.

Q. And in Australia with one-tenth of that percentage?

A. Yes. Well, no, that isn't quite accurate either.

110 We started actually in the computation of damages, in the original computation, on the basis of a 50 per cent share of what our U. S. percentage is in the English market, and a 25 per cent share of our U. S. share in the Australian market.

And after considerable discussion and examination of the matter between Mr. Kaplan, Mr. Migul, Mr. Stevenson, and myself, we determined that because of the import licensing difficulties and problems in that respect, that we should revise that downward to 25 per cent in the English market and 10 per cent in the Australian market. And that is the way the exhibit was finally prepared.

111 Q. Do you find anywhere in that exhibit any reference to the import licensing restrictions in England and Australia?

A. No, sir.

Q. Do you recall, did you tell the Court about that distinction?

A. I'm sorry. May I have the question?

Q. Do you recall, did you tell the Court that in the case of England and Australia you were cutting your percentage down because of import licensing restrictions?

A. I don't recall that I testified on that subject, Mr. Kayser.

The only thing that I recall that I testified originally about England and Australia was that I thought that we could get up to 10 per cent of the British market.

Q. Well, now, in connection with your testimony as to England, you told the Court that Zenith had appointed a Mr. Adam Ramsey as a distributor.

A. Yes.

Q. I would like to read a question and answer on direct, Page 691:

112 "All right. Have you made any efforts at all to go into the English market with television?

"A. Well, we have only sent a very few television receivers to Mr. Ramsey, which he has attempted to market, but we have not made any effort on television because we were informed that the pool license then in effect and the one currently in effect would not permit that and there was no possibility of getting such a license."

As a matter of fact, do you know today, Mr. Wright, whether or not licenses are available from the so-called British pool?

A. Well, as of today, I don't know, but as of—no, as of today I don't know.

Q. Do you even know if there is such a pool in existence?

The Court: As of today you mean?

Mr. Kayser: As of today.

By the Witness:

A. Well, may I—

Mr. McConnell: I object to this.

113 The Court: What is your objection?

Mr. McConnell: My objection is that the only thing

that we had to show in this case was that there was a pool which prevented us from operating during the damage period.

The Court: Mr. Kayser is not going to be foreclosed in testing the witness' knowledge.

The objection is overruled.

By the Witness:

A. Well, I can't tell you, Mr. Kayser, precisely the date when I last heard something about the pool's existence, but it certainly is not more than a year ago, and I am sure that if there had been any change in the status of the pool, of the British patent pool particularly with reference to whether or not a license would be granted that would permit importing, that I would have heard this. It would have been a matter of news in our industry, so I assume that the pool is operating as it always has.

By Mr. Kayser:

Q. Well, referring back to your testimony about "We have only sent a very few television receivers to
114 Mr. Ramsey, which he has attempted to market," did Zenith in fact send to Mr. Ramsey during the period from June 1, 1959, to June 1, 1963, any television sets which were usable to receive commercial broadcasts in England?

A. We sent many television receivers during that period of time. I do not believe that those receivers had been converted to receive the 405-line transmissions that were the principal commercial broadcasts in England at that time.

115 Q. What do you believe they were equipped to receive?

A. Well, they were—it is my understanding now, and I did not read the shipping tickets or the orders on these sets to know what was done with them, that these were

ordinary television receivers which are made to our U. S. standards.

Q. For what purpose did you understand they were sent?

A. I understood they were sent for either demonstration or use or sale.

Q. As 525 line sets?

A. I didn't make any specific inquiry about that.

Q. Do you know what the line transmission is in England?

A. Yes.

Q. What is it?

A. It is a 405 line transmission, the principle part, and they have also more recently had 625 line.

Q. But that was since June 1, 1963, wasn't it, the commercial use of a 625 line? Do you know?

A. I don't know precisely the date. At some point in there they decided that they were going to have it and there was a great intreest in 625 line sets
116 in the British market up to the time when it finally was made a commercial service.

Q. In other words, when you testified back in—you told the Court back in February of 1964 that Zenith had sent a few television sets to Mr. Ramsey which he had attempted to market, you did not know whether or not those sets were equipped to receive English television?

A. No, sir, I did not.

Q. Well, didn't you give that testimony for the purpose of indicating to the Court your readiness to enter the English market with sets which would receive English programs?

A. I did not give that testimony for any other purpose than to state the fact, Mr. Kayser.

Q. What was the fact?

A. Well, the fact was that if we were going to market

in the English market in the kind of quantities and numbers that we are talking about and that this case is all about, we obviously would have been shipping sets to England that were equipped commercially for the broadcasting that they are using in England. This is no great problem. We do this in—we ship sets to the Argentine, 117 kits, and they are made for CCIR.

Q. That is 625 lines, isn't it?

A. This is correct.

Q. Well, when you told the Court that Mr. Ramsey had attempted to market these sets, did you know whether or not he did in fact attempt to market them?

A. Do I know whether he had or not in fact—

Q. Attempted to market them.

A. I didn't know specifically what he had done.

Q. But you told the Court that he attempted to market them, is that right? I will show you your testimony if you have any question.

118 Mr. McConnell: Read him his testimony and ask him if he said it.

The Court: He read it a few minutes ago, Mr. McConnell.

By the Witness:

A. I don't specifically know what Mr. Ramsey did with those sets. I assumed when he bought the sets from us that he was at least testing the market with them, or displaying them, or in some way trying to further his ambition of building up a business in our products in England.

By Mr. Kayser:

Q. When did you send those sets to him?

A. I don't know.

Q. How did you know that you had sent them?

A. I can't tell you specifically how I came by that

knowledge, but I have had conversations with Mr. Ramsey when he comes to our distributor conventions here, usually at least once a year I have had conversations with him at his place of business in London.

Q. Didn't you file an affidavit in this case, Mr. Wright, on October 8, 1965, saying that from and after January
119 1, 1960, Mr. Ramsey wasn't your distributor?

A. I filed—

Mr. McConnell: Wait a minute, let the man see his affidavit instead of characterizing it.

Mr. Kayser: All right.

By Mr. Kayser:

Q. I show you the affidavit—

A. At some point Mr. Ramsey's status changed in that he became a distributor of Zenith Sales Corporation instead of Zenith Radio Corporation. I made an affidavit about that apparently.

Yes, I recall this affidavit.

Q. All right, is it correct?

A. Insofar as I know, it is correct, yes.

Q. Isn't it a fact that any television sets that were sent to England bearing the Zenith trademark were sent by Zenith Sales Corporation after January 1, 1960?

A. That may well have been. They may have actually invoiced them and done the shipping.

Q. In other words, Zenith Radio Corporation did not send sets over regardless of the line transmission, is that right?

120 A. Well, when I said "we" in that testimony, I was thinking of Zenith Radio Corporation, and/or Zenith Sales Corporation, and I was making no distinction in my testimony between one and the other.

Q. Well, is it your position that there is no distinction between Zenith Radio and Zenith Sales Corporation?

A. No, sir, I didn't say that. I said that when I was making that testimony previously I was making no distinction in my mind between the two.

Q. Now, also on this question of your efforts to enter the English market and which has a bearing on your alleged percentages—

The Court: Now, when is this, in the affidavit or the testimony—

Mr. Kayser: I am now going back to the record, your Honor.

The Court: All right, just so the witness has a hint as to what you are talking about.

Mr. Kayser: Yes.

By Mr. Kayser:

Q. On Page 693; examination by Mr. McConnell, you had stated—having to do with the modification of 121 sets:

"These are modifications that aren't too difficult ordinarily, it is just like having another model on the line. I believe in England they have a different number of lines and they use AM sound instead of FM sound, but these are modifications. We have the same situation—

"The Court: I mean, one of your lines here wouldn't function in England.

"The Witness: No, sir.

"By Mr. McConnell:

"Q. You could set up a line that would—

"A. Oh, Mr. Ramsey, in the back room of his little establishment, could make the simpler repairs and alterations that are necessary to make this work. We supply him with parts and kits to do that at times."

122 The Court: Well, what is the question?

Mr. Kayser: All right.

By Mr. Kayser:

Q. Now, my question is, what kits were you referring to? Were you referring to 405 line sets there?

A. No, sir, when I was referring to kits and parts that we had supplied Mr. Ramsey up to that time I was talking —thinking principally in terms of the things necessary to install a long wave band on radio receivers. Actually the television business never warranted setting up any such operation, although I did visit Mr. Ramsey's place of business and saw facilities that he had set up for this purpose should it ever become important.

Q. Did you say that that testimony had to do with radios?

A. Well—

Q. I would like to show you—

A. We were testifying about a lot of different things, but when I testified specifically about our sending him parts and kits to modify sets, the only thing I knew of and what I meant at the time were the things necessary
123 to add long wave to radio sets.

Q. I would like to have you read starting at 691 with the question, "All right." This is by Mr. McConnell, "Have you made any effort at all to get into the English market with television," and read on from the question and answer on 693, if you will.

A. Yes, I have read it.

Q. That testimony had to do with radio or television?

A. No, the testimony appears generally to have to do with television receivers and radio isn't specifically mentioned.

Q. Well, do you know, sir, did Mr. Ramsey ever, during this four-year damage period, ever convert a Zenith set to the 405 line standard?

A. I don't of my own personal knowledge know whether he did or not.

Q. Were you aware, Mr. Wright, of the so-called Pilkington report which came out in England discussing the question of the number of lines in television sets?

A. I knew there was such a report. I have seen references to it in the trade press and portions of it quoted, but I don't believe I have ever read it in its entirety.

124 Q. Were you aware of the fact that it recommended a change over the 625 line transmission in England?

A. I had understood that it had reference to that, but I don't have any very detailed recollection of it.

Q. Isn't it a fact, Mr. Wright, that despite all of your figures on England television that Zenith actually had no interest in entering the English television market until such time as the 625 line system should be adopted and used for commercial broadcasting?

A. No, sir, that is not correct.

125 By Mr. Kayser:

Q. I would like to show you, to see if this refreshes your recollection, a document which is marked Plaintiff's Deposition Exhibit 38 at the deposition of Adam Ramsey taken in London, in September. This was page 329 of the September, 1959 issue of Radio Retailing.

I would like to call your attention specifically to a paragraph which I will read to the Court:

> "Mr. A. Ramsey, Managing Director of United Mercantile, who has recently been for some time in the USA studying market problems told our representative, 'We shall keep a very close watch on the U. K. market so that as the situation warrants it, we can bring in more Zenith products. At the moment, we are waiting to see what the government's decision will be regarding the third TV Channel before committing ourselves on importing TV receivers.'"

A. That does not refresh my recollection.

Q. That does not. You see there it refers to a trade
126 reception which was held by Mr. Ramsey in August, 1959?

The Court: The question is, does this refresh his recollection.

Mr. Kayser: Yes.

The Court: Do you want to change your answer or reiterate it?

By the Witness:

A. No, sir, it does not refresh my recollection.

The Court: All right. That is the end of that.

By Mr. Kayser:

Q. Were you aware of that trade reception?

A. No, I was not.

Q. You were not. I show you a document marked as Plaintiff's Deposition Exhibit 54 at the Ramsey deposition in September, which was page 21 from Electrical and Radio Trade, and I show you the article headed "Zenith TV here if 625 comes in." Does that refresh your recollection?

The Court: In regard to what?

By Mr. Kayser:

Q. As to whether or not Zenith was waiting for 625 line television before it entered the UK market.

127 A. No, it does not.

Q. I call your attention to Plaintiff's Deposition Exhibit 55 in the Ramsey deposition, which is the May 19, 1962 issue of Electrical and Radio Trade. I point out —I call your attention to the story "Zenith Ready." It says,

"Zenith, the leading American TV manufacturer, is all set to provide 625 line sets to Britain as soon as the outcome of the Pilkington Report is known. A. R.

Ramsey, Managing Director of United Mercantile Company, sole distributors in the UK, told E. R. T. this week that color sets as well as black and white will be imported immediately the market opens."

Does that refresh your recollection as to whether or not—

Mr. McConnell: I object to reading things into the record which Ramsey said, which he never gave out in his deposition.

The Court: All I know is that Mr. Kayser, on cross-examination, can ask any question he wants. And what
128 he is reading doesn't tend to prove that this ever happened, and the objection is overruled.

By Mr. Kayser:

Q. Does that refresh your recollection as to whether or not Zenith was in fact waiting for the advent of 625 line TV before it entered the English market?

A. No, sir.

129 Q. I suppose your answer would be the same if I showed you four or five similar types of articles?

A. Yes, if they were from the same source and of the same type, and dealt with the same subject.

Q. You weren't aware of the fact that these stories were appearing in the English trade press, newspapers?

A. I have no recollection of them.

Q. Did Zenith ever indicate—or Zenith Sales Corporation ever indicate to Mr. Ramsey that it would enter the English market when the 625-line sets became usable?

A. I don't know of any such instance—any instance of that. As far as I know, it's been the policy of Zenith and its whole organization that we would get into that British market when we could.

Obviously, the 625-line sets would make it easier in a sense, because the conversion factor there is a relatively

simpler one. But that had nothing to do with the question of whether we were in England or not.

130 Q. Now, as I understand it, Zenith Sales Corporation took over the export of radio and television to England starting January 1, 1960; is that right?

Mr. McConnell: Well, I object to that. There are documents, written documents, which govern the rights of the parties.

The Court: He's putting his case on. The objection is overruled.

By the Witness:

A. I don't recall any decision like that. I think that at some date in there, the export department of Zenith Sales Corporation started actually handling the sales to Mr. Ramsey and the billing, and so forth. And I believe the distributor contract was made with the Zenith Sales Corporation at some point in there.

By Mr. Kayser:

Q. Well, you mean handling the billing? Did Zenith Sales Corporation buy and resell?

A. I believe they did. The machanics of it is that the sets were sold by the parent company to the subsidiary, and then by the subsidiary to Mr. Ramsey.

131 Q. Well, that was the mechanics and also the legal effect, was it not?

A. Yes, sir.

Q. So that actually, after January 1, 1960, Zenith Radio Corporation had no distributor in the United Kingdom?

A. That's correct.

Q. Yet you told this Court in February of 1964 that Mr. Ramsey was your current man, did you not?

Mr. McConnell: Let's have his testimony if you are going to impeach him on it.

Mr. Kayser: All right.

Mr. McConnell: Or try to impeach him on it.

Mr. Kayser: I accept your first comment.

By Mr. Kayser:

Q. Well, at 689 you stated on direct examination:

"Q. Now, since the lawsuit which we have been talking about"—that was the RCA case—"has Zenith made any effort to sell radios in England?

"A. Yes, we have.

132 "Q. And with what results?

"A. Well, we made an arrangement with a man—I've forgotten the name of the company—the man's name is Adam Ramsey, who is the owner of it, or the proprietor of the business, who has been over here many times at our conventions and has been very enthusiastic about the possibility of developing our business in England."

And then—

Mr. McConnell: Wait a minute. Now, if he is going to attempt to impeach the witness, your Honor, the question is did he make that statement or did he so testify.

The Court: I'm waiting for the next question, because I don't know the purpose for which this was read.

By Mr. Kayser:

Q. Is that your testimony?

A. I recall that it is, yes.

133 Q. And over at page 709:

"Q. All right. Now let's come to England. When was the last time when the British Pool interfered with a dealer or prospective dealer of Zenith with respect to importation of radio receivers into England? And by interfere, so that there will be no misunderstanding, I mean made any sort of direct approach, oral, correspondence, or other threatening approach, neglecting general advertisements or notices in the trade press?"

And your answer was:

"Well, we were completely cut out of England, where we did no business whatever, until, I would say, from a period—of my knowledge of the company—from the end of the War until approximately 1958 is my recollection—or '59, perhaps, when the current man who is representing us over there on some products took on the job of trying to build up some distribution."

Do you call that testimony?

134 A. Yes, sir.

Q. The current man you were referring to was Adam Ramsey?

A. Yes, sir.

Q. And in February, 1964, he was not your distributor; is that right?

Mr. McConnell: Wait a minute now. He's referring to "your" now. There is two companies involved here. If he wants to ask him Zenith Radio Corporation, all right.

By Mr. Kayser:

Q. All right. In February, 1964, he was not the current man of Zenith Radio Corporation?

A. Well, he apparently was the distributor who had an agreement with Zenith Sales Corporation rather than Zenith Radio Corporation. But I can never—when I testified before, as I said, I was making no distinction between Zenith Sales Corporation and Zenith Radio Corporation in that category. I will speak of "our distributor" in Portland, Oregon. Well, he's probably a distributor for Zenitth Sales Corporation.

Q. Well, Mr. Wright, you knew who the counter-claimant was here, did you not, in this case?

135 A. Yes, sir.

Q. It was Zenith Radio Corporation?

A. Yes, sir.

Q. Of which you were the president?

A. Yes, sir.

Q. And you knew, did you not, that this was an extremely important piece of litigation both to Zenith and to Hazeltine Research?

A. Yes, sir.

Q. Yet you say you didn't even know whether or not Mr. Ramsey was your distributor or your subsidiary's distributor?

A. Yes, I knew that perfectly well. When I used the term "our" in that previous testimony, I was speaking of "our" as including the whole family, the parent company and the wholly owned subsidiaries.

Q. Now, you told this Court that you had been excluded from England, Canada and Australia for many, many years by the patent pools?

A. Yes, sir.

Q. You told this Court that based on that exclusion, you were entitled to damages during the statutory period of four years?

136 A. Yes, sir.

Q. And you told this Court that you were claiming damage based on your U. S. experience in selling radio and television sets?

A. Well, I don't believe I testified to that previously.

Mr. McConnell: I object to characterizing his testimony. If we are going to get into his testimony—

The Court: I think you should read rather than summarize in a way, perhaps, that it might be favorable to the question as far as you are concerned. I think you ought to read the testimony.

By Mr. Kayser:

Q. All right. As to Canada, I would like to read to you from your testimony on 678.

Question by Mr. McConnell:

"From your experience in this business with Zenith, have you an opinion as to whether or not, in a free market, without any restrictions of the kind that we are talking about here, you could do proportionately
137 as well in Canada?

"A. I don't have any doubt about it, Mr. McConnell.

"Q. What is your opinion?

"A. Excuse me. I believe—I am convinced that with the kind of quality products we make and the reputation we enjoy both here and in Canada, that taking away these clouds and difficulties that he have had with the Pool, these patent matters, that we could build up to a similar percentage of industry in Canada that we have in the United States."

Were you asked those questions and did you give those answers?

A. I recall that I did, yes.

138 Q. And it was based on that testimony that you concurred in the figures given in Exhibit 220?

The Court: In regard to Canada, do you mean?

By Mr. Kayser:

Q. In regard to Canada.

A. Well, I don't know which came first. As I recall it, I had the conferences relating to the exhibits and the damage claim before my testimony. It may have been the other way around, I don't remember which is which.

Q. But you concurred in the Exhibit 220?

A. Yes, sir.

Q. All right. Now, I would like to read from your testimony in relation to the United Kingdom.

The Court: Is it the same time and place?

Mr. Kayser: Yes, also in February 1964.

The Court: Well, read his question and answer.

By Mr. Kayser:

Q. Reading, starting at Page 694:

"Q. Well, have you an opinion as to whether or not you could obtain a comparable share of the English market if you were free from the restrictions which we have been talking about here?

"A. Well, I think we could attain a fairly respectable share of the British market. But I can't say that I think we would get, say, around 20 per cent of the market that we get here in the United States. The distances are too great.

"But I think—I don't have any question in my mind that we could do a substantial share of the British business if we were given an opportunity to compete without these restrictions.

"Q. What proportion of that market do you think you could attain?

"A. I would say we could get a half of our per cent of the industry in the United States. In other words, if we did 20 per cent here, I would think that we could build up to a 10 per cent share of the British market."

Were you asked those questions and did you give those answers?

A. Yes.

Q. You referred in your first answer about what you could do if "we were given an opportunity to compete without these restrictions." What restrictions were you talking about?

A. I was talking about the pool restrictions.

Q. And I believe you did not testify as to Australia; is that correct?

A. I don't believe I was asked anything about market share in Australia, no.

Q. But you concurred in the figures in Exhibit 220?

A. Yes, I did.

Q. Well, if as you, I believe, have agreed, Mr. Wright, you took the position that for many, many years prior to June '59 you were excluded from all three markets, why did you not in all three countries assume entry into the market place on June 1 with an established market?

A. Well, we were aware that there were difficulties in obtaining import licenses in England and Australia
141 up to that time.

Q. Up to that very date?

A. Up to that period of time. I don't know that I was ever aware of just what particular day was involved.

Q. How did you happen to choose June 1 if you didn't know the exact date of the removal of the restrictions?

A. I don't know. I can't add anything to what Mr. Kaplan said this morning. That was something the attorneys apparently supplied.

Q. They supplied the June 1, 1959, date?

A. Yes.

Q. Which attorneys supplied that?

A. I don't recall. I assume it was either Mr. Curtis or Mr. McConnell, but I can't tell you which one.

Q. In other words, they told you that by reason of the problems of import, you should use June 1, 1959, as the—

A. No—

Mr. McConnell: I object.

By the Witness:

A. No, I don't recall any conversation such as
142 that.

By Mr. Kayser:

Q. You don't. During this four-year period, in referring to England, did you know what the average price was of an English television set sold at the retail level?

A. During all of that period?

Q. During any part of it.

A. Yes. I had, at least at one point I had seen figures on what the competition was in terms of receivers. I had been in England myself. I had seen them in retail establishments.

143 Q. How recently had you been in England?

The Court: Recently in regard to what?

By Mr. Kayser:

Q. How recently at the time you testified in February, prior to February 1964?

A. Well, it was quite a few years before February '64.

Q. Well, how many?

A. About nine.

Q. That's about 1955, right?

A. Yes.

Q. And on the basis of seeing some sets in '55, you figured that you knew what the prices were in 1959?

A. No, that wasn't my basis. We had market surveys; we got information on the British market from people like Mr. Ramsey who came over to call on us at least once a year; I had a visit from at least one representative of an English manufacturer almost every year during those ten years in which we discussed the situation in the British market.

Q. Well, I believe here in 1959, for the last seven months of '59, your average Canadian price was $148.73.

144 You can refer to your Exhibit 220 if you are uncertain.

A. Yes.

Q. Now, is it not a fact that Mr. Ramsey in his sales applied a multiplier of 3.7 to that Chicago price in deciding what the suggested resale—retail price should be?

A. I don't know that that is what he did.

Q. You don't know?

A. No, sir.

Q. You don't know that a Zenith selling in Chicago for $148 with that multiplier would sell in the neighborhood of $540 in England?

A. Well, that doesn't sound like a proper multiplier to me.

Q. And you don't know what the English price was during the four-year period?

A. Are you now talking about the price of the competition in England—

Q. I am talking about the price which competition would charge at the retail level, including the purchase tax.

A. I have seen figures on this with the ranges from the bottom to the top and median over at least a part 145 of this period of time, but I don't have it in my mind now.

Q. The median was under $200, was it not?

A. Oh, that's not my recollection of it. There were some table models that were under that, but I was surprised at the price levels over there, at the height of them.

Mr. Kayser: That is all, your Honor.

The Court: Anything further?

Mr. McConnell: Yes, I have a few questions.

The Court: Go right ahead.

Redirect Examination by Mr. McConnell.

Q. You were asked about a contract between Zenith Radio and Mr. Ramsey. Are you aware that that contract did not cover television sets at all, the distributor contract?

A. I had heard that, but I don't recall that I ever specifically saw the contract.

Mr. Kayser: Objection unless it is produced, because I'm not asking about a written contract. If you do—

Mr. McConnell: You asked him about his general
146 knowledge of what he did with Ramsey.

Mr. Kayser: Well, the best evidence of the contract would be the contract itself.

The Court: The best evidence on the contract is the contract itself, but this certainly isn't very helpful when he says he has no knowledge of it.

Of course, some of your questions didn't produce any solid results either, so if he wants to get soft on these questions, I will give him his chance.

Mr. McConnell: Thank you, your Honor.

The Court: All right.

147 Mr. McConnell: If it is important, I think the document is in the file with the Ramsey deposition.

The Court: Anything further?

Mr. McConnell: Yes, just a minute, your Honor. I am looking at my notes.

By Mr. McConnell:

Q. Now, you were asked about the restrictions of the Pool. In your previous testimony here in this Court, didn't you tell the Court that if you sent television sets over to England that they were subject to forfeiture under the English Patent Laws?

A. Yes, sir.

Mr. Kayser: Will you read his testimony, please?

Mr. McConnell: Well, I am not trying to impeach him.

By Mr. McConnell:

Q. Is that the sort of restriction that you were referring to?

A. Yes, sir.

Q. That would impede your attempt to market television sets in England?

A. Yes, sir.

148 Q. And you were thoroughly aware of that, weren't you?

A. Yes, sir.

Q. You were asked about the different lines of 405 and 625; are you aware that manufacturing companies in England do produce sets with 405 lines and 625 lines?

A. Yes, it is my understanding that they produce sets which are capable of receiving both the 625 and the 405.

Q. Is there any reason at all that you know of that Zenith couldn't produce such a set?

A. None whatever. We produce sets to meet—and kits and parts and knock-downs to meet local conditions in varying export markets in many places in the world.

Q. And you would put that on a separate assembly line, would you not?

A. If there was any kind of volume such as we are talking about here in Canada and places where there are some slight differences, we would make a separate line.

Q. But you did not have the volume in England that would justify that?

149 A. No, sir.

Q. You didn't have any market at all, did you?

A. Not in television, no.

Q. What was the reason for that?

A. The reason was that we just could not get in there because of the threats that this Patent Pool would make against any person that would try to distribute our goods.

Q. Now, you were asked about who was selling radio in England and I think you said the Zenith Sales Corporation after 19—January of 1960 had a contract with Mr. Ramsey to distribute radios. Who sold your sets in Canada as between Zenith Sales Corporation and Zenith Radio?

A. All sales to Canada, in my understanding, had been directly by Zenith Radio Corporation.

Q. Is there any agreement that you know of, any contract or agreement, written, oral or by understanding that would prevent Zenith Radio Corporation as distinguished from Zenith Sales Corporation from selling television sets in England or anywhere else?

A. No, sir, none whatever.

150 Q. In other words, the only thing that would prevent it is what you testified to, the pool?

A. That is correct.

The only function that Zenith Sales Corporation ever provides is as an instrumentality in some instances of sales and reselling goods made by the parent company, and there is no—it is entirely within the control of the parent company as to when and if that procedure is employed.

Q. And you as president—

The Court: I suppose that this is being offered pursuant to the pending motion which I haven't even got to.

Mr. Kayser: I was wondering myself, your Honor, what the examination was for.

The Court: Well, I assume that is what it is for.

Mr. McConnell: If your Honor is right, and I just don't want the record to be—he put it in for that same reason, I assume.

Mr. Kayser: No, I didn't.

The Court: All right, you have got it in the record

151 and he has it in the record and everybody is happy, and let's get down to this lawsuit that we are trying today.

Mr. McConnell: Thank you, your Honor.

By Mr. McConnell:

Q. Now, there was some talk here about the effect of starting from scratch, to use the colloquialism. From your experience in handling the products of Zenith Radio Corporation, would the beginning period of the market have to be small because you were starting from scratch?

A. Well, not necessarily.

Ordinarily, in order to sustain any sizable merchandising operation, you have got to have an inventory situation at the distributor level and at the dealer level, and when you are going into a market with the idea of doing a first class job and getting a major share of that market, your first step is to get distributors and dealers and then to load the pipes with merchandise.

In the United States it has been our experience in television that our distributors need to have a minimum of four weeks' supply and up to—we feel better about a six or
152 eight-week or even ten-week supply of inventory in order to service their account.

There is a similar inventory situation, although we don't have as good figures on it, at the dealer level; so that what you like to have is eight weeks of inventory in the hands of the distributors and at least an equal amount in the hands of your dealer accounts so that if you were starting in this case you would undoubtedly have the higher level of sales in the initial period that actually would not have moved to the consumer level yet, but would be in the hands of the people along the way.

Q. Well, you were selling your product f.o.b. factory here in Chicago, were you not?

A. That is correct.

Q. And in making your estimates here you took into consideration, I take it, the freight, insurance, tariff in England?

A. Yes, sir.

Q. Did you allow a markup for the retailer on the product?

A. Yes, sir.

Yes, we assumed that our goods had to be competi-
153 tive in the market, not that we would sell at the same price. We figured that we could do this kind of business

in England and Australia, selling at a premium over the ordinary level of prices of the other manufacturers there. We get a higher average price here in the United States than our competition does.

154 Mr. McConnell: I have no further questions, your Honor.

Recross-Examination by Mr. Kayser.

Q. How big a premium did you think you would be selling at in England over competitors?

A. Well, this would vary from model to model. I would think it might be anywhere from 15 to 35 per cent.

Q. 15 to 35 per cent.

How about 100 per cent?

A. I would doubt that we would be 100 per cent over the competition.

Q. Well, would you also—

A. On any item.

Q. Would you also doubt that you could sell at 100 per cent over competition?

A. Excuse me?

Q. I say, do you think that you could sell if your prices were double those of the competition?

A. I think we could sell, but it certainly would be a handicap in selling.

Q. You think that you could sell any volume of tele-
155 vision sets charging twice as much as your competitors?

A. We could not do a very substantial part over the industry business selling at a 100 per cent over the market, no, sir.

Q. But what about if you were a 150 per cent over?

A. It seems to me that that almost answers itself.

Q. Well, a 100 per cent almost answers itself, doesn't it?

The Court: He has given an answer.

By Mr. Kayser:

Q. Now, Mr. McConnell asked you about what happens in an initial period; I believe you know that the English import restrictions did not go off until June 8th, is that correct?

A. I have heard that.

Q. And you also know that you appointed a distributor after that time.

A. I don't recall exactly when Mr. Ramsey was appointed.

Q. You don't know whether it was before or after June 8th?

A. No, sir.

156 I think the record shows it, but I don't recall the dates.

Q. Do you know that he was literally a one man operation?

A. Well, I knew he was—it was a small operation, yes. I did not know it was literally one man.

Q. Well, it was not a—do you know whether he had ever distributed radios or televisions before?

A. No, I don't. He had extensive merchandising experience and I think he came to us recommended by a man who had been a distributor of ours in Israel for thirty years.

Q. Well, is it your testimony that you could have sold, in the last seven months of 1959, 63,210 television sets in England, starting from scratch on June 8th or June 1?

A. I don't see how anybody could, under oath, try to reconstruct a situation and say that on this day you would sell 3,000 sets and on this day you would sell 2,000, or in this particular month or three months or six months that this is precisely what would be sold.

157 This represented our best judgment, applying what we know about this business and taking into account the factors that we thought were important as to how this

business would break down, but as—actually our sales vary from week to week and from month to month here in the United States, and I am sure that the situation would be no different in England.

If we were in a loading program getting in there in the last half of that year and getting up to the Christmas Season and building up and sending a lot of goods over by ship, I don't think it is inconceivable that the figure might come out right at that point, but I can't say that it would.

158 Q. Now, in Australia, isn't it a fact that you did not even inquire as to whether or not the import restrictions were off until March of 1960?

A. I don't know that that is a fact, Mr. Kayser.

Q. You don't know?

A. No.

Mr. Kayser: That is all.

The Court: Are you through?

Mr. McConnell: Nothing further, your Honor.

COLLOQUY AND REMARKS BY COURT.

* * * * * *

The Court: Very good. We will have a short recess and you will call your next witness.

Mr. McConnell: We have no more witnesses.

* * * * * *

159 The Court: Anything, Mr. Kayser?

Mr. Kayser: Well, your Honor, under the Court's direction I have understood that the only witnesses to be here today were the Zenith witnesses. This was the effect of your Honor's ruling.

The Court: You have no witnesses to offer today or any other time?

Mr. Kayser: No, I did not—under this ruling it provided merely that the Zenith witnesses would return.

The Court: Well, then, this is the end of the hearing, in your opinion?

Mr. Kayser: Well, Zenith has produced its witnesses other than the third witness who I—from what I have heard probably has nothing—

The Court: Everybody rests? Is that what I understand?

Mr. McConnell: Yes, I rest.

The Court: You rest?

Mr. Kayser: I rest to the extent that I have cross-examined the Zenith witnesses that were produced.

The Court: Does anybody have anything to say as 160 a result of what has occurred, then?

Mr. Kayser: Your Honor, I would certainly like a chance to argue this and call to your Honor's attention a great many things that are in this record that have been overlooked today.

The Court: You are certainly going to get an oppor-

tunity to do so, and I suggest that you, having expressed a desire to do so, that you proceed to do so.

Mr. Kayser: Well, Mr. McConnell wish to argue? After all, he is the moving party here.

The Court: Well, Mr. McConnell can sum up, if he wishes, what the Zenith witnesses have said, which as the Court understands is their testimony that at the time they gave these percentages they had in mind that they applied to a zero situation.

Mr. McConnell: I cannot add anything to it by argument.

The Court: All right, that is his argument. The Court made it for him. Now you respond to Mr. McConnell.

* * * * * *

263 The Court: There could be no question in my mind that Zenith suffered damages during the damage period by virtue of the pools which I have found, and reiterate, existed at the time of the damage period. There was precedent for using the method that was used by the Court for ascertaining the damages as far as Canada was concerned. A further hearing has indicated that the situation in regard to the United Kingdom and Australia was different than it was in regard to Canada; that the pool was not the sole reason that sales could not be made prior to the damage period in the United Kingdom and Australia.

I'm unaware of any authorities that cover a thing such as this. I suppose it could be argued that had the Government embargoes not existed, that that would have made no difference in regard to the ability of Zenith to import into England and Australia, and there would be merit to that argument. However, I can't say that the inability to establish what the market would have been, had it not
264 been for these pools, is in the same category as it was in Canada because the pools themselves were not re-

sponsible for the ability to determine what the market might have been prior to the lifting of the embargoes.

I have difficulty believing that, with the competition in radio and television, and with the acknowledged fact that Zenith is a premium product selling even in America for more than the competition, and who because of tariffs and other regulations must of necessity have sold for much more in the United Kingdom and Australia. However, because of the fact that it's a premium article, I feel certain that there would have been those, after becoming convinced, who would have paid that premium to obtain a Zenith.

I feel that in regard to both countries, it is unrealistic to believe that starting out from scratch they could have achieved the percentage of the market and the percentage of profits that Exhibit 220 indicates they might receive. And as I have indicated, there is no question they lost money by virtue of the pools' excluding them.

In regard to the United Kingdom, the Court is not disposed to quarrel about the difference between June
265 1st and June 8. It appears to the Court that under the evidence, that a more realistic date in regard to Australia would be April 1st of 1960, and that for the period prior to April 1st of 1960, it would be unrealistic to indicate that Zenith suffered any economic loss by virtue of the pools.

The Court has difficulty in believing—and as I understand it, I'm not bound by the fact that evidence is uncontradicted and undenied; it must be believable in the first instance. And the Court is aware of the pride of officers in their corporation, and the belief in their product, but it is unrealistic to the Court for me to believe that Zenith, as a quality item, selling in excess of locally manufactured items, could have attained the profits for Zenith that are

indicated by the guesstimate which everybody indicates is what Exhibit 220 is.

The Court feels that for the first calendar year after the damage period started, which would be June 1st in the United Kingdom and April 1st in Australia, that Zenith or anyone else would have been and should have been
266 satisfied with not incurring a loss for that calendar year. In regard to a quality item, more than mere advertising is necessary to persuade the buying public. There must also have been word-of-mouth and word-of-praise from those who had become owners of the quality product to those who were prospective purchasers.

And for that reason, the Court rules—and I'm going to let you gentlemen figure out the mathematics of it—that in regard to the first calendar year after the damage period started, as I have indicated the dates, that there should be no lost profit in either the United Kingdom or Australia. That is the first calendar year.

I believe that there is a growing increase in the market of a quality product such as Zenith, which would not have jumped as rapidly as Exhibit 220 indicates. So in regard to the second calendar year, the Court finds that the damages would be 50 per cent of those indicated for the second period on Chart 220.

In regard to the third calendar year, they would be 75 per cent of the profits indicated by the amount indi-
267 cated in the last column on 220.

And in regard to the fourth calendar year, and I guess that only applies to the United Kingdom because of the differential of nine months involved, that the figures, the lost profits indicated in regard to the fourth calendar year would be 100 per cent of the amount indicated on the lost profit or loss-of-sales item in the last column on Exhibit 220.

Counsel are requested to draw an order complying with

what the Court has announced and save the Court the difficulty of the mathematics involved. And having perhaps arrived at a conclusion that is unsatisfactory to both sides, it gives me heart that this is a good decision.

Call the next case, Mr. Clerk.

Mr. Kayser: Your Honor—

Mr. McConnell: If the Court please—

Mr. Kayser: May we have some time to file offers of proof?

The Court: You may file your offers of proof.

The record I want to indicate at this time—there has
268 to be an end of litigation. I don't intend to permit a second chance to do the things that might have been done at the first trial. I have the tag end of this litigation in the back room that, now that I have disposed of this, I will dispose of, and that is a matter of an indispensable party. That I hope to dispose of very rapidly.

Then, whatever occurs from now on, I hope will occur on the 27th floor of this building and not on the 21st floor. Both of you may say whatever you wish.

269 The Court: That's what I will do, and you may have 20 days to file written offers of proof so that we can get this show on the road and off the 21st floor. All right.

404 UNITED STATES DISTRICT COURT,

Northern District of Illinois,

Eastern Division.

Name of Presiding Judge, Honorable Richard B. Austin.

Cause No. 59 C 1847 Date Nov. 28, 1965

Title of Cause Hazeltine v. Zenith.

Brief Statement of Motion

Adjourned HRG

Reserve space below for notations by minute clerk.

Further argts hd & concld—Lv to Hazeltine to fl offers of proof within 20 days—Motion of Zenith for attys fees and costs under advisement & ruling reserved.

Austin, *J.*

405 UNITED STATES DISTRICT COURT.
Caption—59-C-1847)

NOTICE OF MOTION.

To: Victor P. Kayser, Esq.
Chadwell, Keck, Kayser, Ruggles & McLaren
135 South La Salle Street
Chicago, Illinois
Attorneys for Plaintiff-Counterdefendant.

Please take notice that on Tuesday, November 30, 1965, at 10:00 o'clock A.M., or as soon thereafter as counsel can be heard, Zenith Radio Corporation, Defendant-Counterclaimant, by its attorneys, will appear before the Honorable Richard B. Austin, Judge of this Court, in the courtroom usually occupied by him, and will move the court to enter the enclosed finding of fact and judgment order, copies of which, together with this motion, are herewith served upon you.

Dated this 29th day of November, 1965.

Francis J. McConnell,
Attorney for Defendant-Counterclaimant
Zenith Radio Corporation.

Of Counsel:
McConnell, Freeman, Curtis & McConnell,
134 South La Salle Street,
Chicago, Illinois 60603,
RAndolph 6-9131.

UNITED STATES DISTRICT COURT,

Northern District of Illinois,

Eastern Division.

Name of Presiding Judge, Honorable Richard B. Austin.

Cause No. 59 C 1847 Date Nov. 30, 1965

Title of Cause Hazeltine *vs.* Zenith Radio Corporation

Brief Statement of Motion

Defts motion to enter amended finding of fact and to enter final judgment entd & contl to Dec. 13, 1965 on mo of pltff—motion of Hazeltine to dism counterclaim for lack indispensable party is denied—

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and addresses of moving counsel

McConnell, Freeman, Curtis and McConnell
134 South La Salle Street, Chicago, Illinois 60603

Representing

Defendant

Names and Addresses of other counsel entitled to notice and names of parties they represent.

Victor P. Kayser, 135 S. La Salle Street, Chicago, Ill.

Reserve space below for notations by minute clerk.

Enter order.

Austin, J.

408 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—59-C-1847) * *

MEMORANDUM OF PLAINTIFF, HAZELTINE RESEARCH, INC., CONCERNING FORM OF PROPOSED AMENDED FINDING OF FACT XXXVI AND PROPOSED FINAL JUDGMENT SUBMITTED BY ZENITH RADIO CORPORATION ON NOVEMBER 30, 1965.

This Court on November 30, 1965 gave Hazeltine Research, Inc., leave to file objections to the proposed form of Amended Finding XXXVI, and Final Judgment, submitted by Zenith. It should, of course, be understood that in making its objections and suggesting alternate or additional language, Hazeltine Research is addressing itself solely to the question whether the proposed Amended Finding and Final Judgment are in conformity with the oral opinion of this Court rendered November 23, 1965, and does not consent to the entry of the Amended Finding and Final Judgment or waive its right to question its entry and to appeal therefrom.

409 The Proposed Amended Finding of Fact XXXVI.

In proposing its Amended Finding of Fact, Zenith has submitted to counsel for Hazeltine Research, and we assume to this Court, a two-page document headed "Award by Federal District Court for United Kingdom and Australia—Allocation to Damage Years," a copy of which is attached hereto. This document purports to show revised computations of alleged damage for each of the periods referred to in the Court's November 23, 1965 opinion and the totals so shown are incorporated in the proposed Amended Finding. However, this two-page document is not referred to in the Amended Finding.

We suggest, so the record may be complete and the Court of Appeals on a review may have all of the information before it, that first, the Finding should recite that it is entered pursuant to the Court's oral opinion of November 23, 1965 and, second, the computations involved in arriving at the totals shown in the Amended Finding should be included as a part of the record.

Accordingly, we believe that the last sentence of page 1 of the proposed Finding should be amended so that the language starting "but modifies and amends its find-
410 ing," etc., be rewritten to read:

> "but, pursuant to its oral opinion rendered November 23, 1965 and to the revised computations shown in the document entitled 'Award by Federal District Court for the United Kingdom and Australia—Allocation to Damage Years,' attached hereto, modifies and amends its finding as to the amount of damages in these markets as follows:".

A copy of said document should be attached to the Amended Finding.

The date shown on the heading to the proposed Finding of Fact should, of course, be changed.

The Proposed Final Judgment.

As concerns the matter of costs and attorneys fees, referred to in both the second and third paragraphs of the proposed judgment, we understand that under the Court's ruling of November 23, 1965 this whole subject has been reserved for later consideration by this Court after an appeal. If Zenith intends that its proposed language relative to costs and fees should be construed to have any other meaning, then to that extent, we object to it.

As concerns the second paragraph of the order, the date of the original judgment was, of course, April 5, 1965, not April 2, as indicated in Zenith's draft.

411 In the first paragraph of the judgment, the reference to the date of the Finding should be changed to the actual date of entry.

Respectfully submitted,

Hazeltine Research, Inc.,
By /s/ Victor P. Kayser,
by C. L. C.,
135 South La Salle Street,
Chicago, Illinois.
One of its attorneys.

413

AWARD BY FEDERAL DISTRICT COURT FOR UNITED KINGDOM AND AUSTRALIA.

	Per Claim	Months	Amount	Allocation to Damage Years	Total	Judgment %	Judgment Amount
United Kingdom Television							
1959 (7 mo.)	$ 1,517,357	7	$1,517,357	6/1/59-5/31/60	$2,317,957	0	$ —
1960	1,921,439	5	800,600				
		7	1,120,839	6/1/60-5/31/61	1,944,878	50%	972,439
61	1,977,694	5	824,039				
		7	1,153,655	6/1/61-5/31/62	1,906,158	75%	1,429,619
62	1,806,007	5	752,503				
		7	1,053,504	6/1/62-5/31/63	1,910,866	100%	1,910,866
63 (5 mo.)	857,362	5	857,362				
Total	$ 8,079,859				$8,079,859		$ 4,312,924
Radio							
1959 (7 mo.)	$ 127,203	7	7 127,203	6/1/59-5/31/60	$ 215,891	0	$ —
1960	212,851	5	88,688				
		7	124,163	6/1/60-5/31/61	254,963	50%	127,482
61	313,921	5	130,800				
		7	183,121	6/1/61-5/31/62	322,372	75%	241,779
62	334,203	5	139,251				
		7	194,952	6/1/62-5/31/63	375,841	100%	375,841
63 (5 mo.)	180,889	5	180,889				
Total	$ 1,169,067				$1,169,067		$ 745,102
Total U. K.	$ 9,248,926						$ 5,058,026

Australia							
Television							
1959 (7 mo.)	$ 89,875	7	$ 89,875	4/1/59-3/31/60	$ 128,983	Elim.	
1960	156,430	3	39,108				
		9	117,322	4/1/60-3/31/61	156,616	0	$ ——
61	157,177	3	39,294				
		9	117,883	4/1/61-3/31/62	155,410	50%	77,705
62	150,106	3	37,527				
		9	112,579	4/1/62-3/31/63	155,898	75%	116,924
63 (5 mo.)	72,198	3	43,319				
		2	28,879	4/1/63-5/31/63	28,879	100%	28,879
Total	$ 625,786				$ 625,786		$ 223,508
Radio							
1959 (7 mo.)	$ 10,004	7	$ 10,004	4/1/59-3/31/60	$ 13,966	Elim.	
1960	15,846	3	3,962				
		9	11,884	4/1/60-3/31/61	15,669	0	$ ——
61	15,138	3	3,785				
		9	11,353	4/1/61-3/31/62	15,413	50%	7,707
62	16,238	3	4,060				
		9	12,178	4/1/62-3/31/63	17,904	75%	13,428
63 (5 mo.)	9,543	3	5,726				
		2	3,817	4/1/63-5/31/63	3,817	100%	3,817
Total	$ 66,769				$ 66,769		$ 24,952
Total Australia	$ 692,555						$ 248,460
Total U.K. and Australia	$ 9,941,481						$ 5,306,486
Total Trebled	$29,824,443						$15,919,458

415 UNITED STATES DISTRICT COURT.
* * (Caption—59-C-1847) * *

MEMORANDUM OF HAZELTINE CORPORATION, APPEARING SPECIALLY.

At the time of the proposed entry of judgment against it earlier in 1965, Hazeltine Corporation, a Delaware Corporation, appeared specially for the sole purpose of opposing the entry against it of any judgment in this action, on the grounds set forth in said special appearance and the accompanying brief and affidavits, all of which were filed herein on April 2, 1965. Pursuant to the preceding special appearance, Hazeltine Corporation hereby opposes the entry against it of the "Final Judgment" proposed by Zenith Radio Corporation on November 30, 1965, or the entry of any judgment against it in this action, on the grounds previously stated.

Hazeltine Corporation
By /s/ Victor P. Kayser,
Victor P. Kayser,
135 South LaSalle Street,
Chicago, Illinois 60603.
One of Its Attorneys.

Of Counsel:
Chadwell, Keck, Kayser,
Ruggles & McLaren,
135 South La Salle Street,
Chicago, Illinois 60603.
RAndolph 6-2545.

1000 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—59-C-1847) * *

AMENDED FINDING OF FACT DATED NOVEMBER 30, 1965.

The Finding of Fact, No. XXXVI, heretofore entered herein on February 25, 1965, with respect to the damages sustained by Zenith Radio Corporation during the damage period June 1, 1959 through May 31, 1963, is hereby modified and amended with respect to England and Australia only as follows: The Court reconfirms its finding that the foreign commerce of Zenith was restrained and that Zenith was in fact damaged by the patent pools in England and Australia during the damage period but modifies and amends its finding as to the amount of damages in these markets as follows:

1001

England		
Television	$4,312,924	
Radio	745,102	$5,058,026
Australia		
Television	223,508	
Radio	24,952	248,460
Total England and Australia		$5,306,486

Enter:

R. B. Austin,
Judge.

Dated: Dec. 13, 1965.

1002 UNITED STATES DISTRICT COURT,
Northern District of Illinois,
Eastern Division.

Name of Presiding Judge, Honorable Richard B. Austin.

Cause No. 59 C 1847 Date Dec. 13, 1965

Title of Cause Hazeltine vs. Zenith Radio.

Brief Statement of Motion
Offers of proof of Hazeltine.
Motion of Zenith for entry of Fndgs of Fact & Concls of Law & Judg.

Reserve space below for notations by minute clerk.

Offer of proof recd on behalf of Hazeltine together with certain affidavits in supp thereof.

Enter fndgs of fact & concls of law (Draft).

Enter Final Judg in favor of Zenith Radio Corp., deft-counterclaimant & against Hazeltine Corp., et al. in sum of $15,919,458 and costs & attys fees—Jurisdiction of this Court reserved for hrg on costs & attys fees (Draft).

Austin, *J.*, Dec. 14, 1965.

998 IN THE UNITED STATES DISTRICT COURT,
Northern District of Illinois,
Eastern Division.

Hazeltine Research, Inc., *Plaintiff,*
vs.
Zenith Radio Corporation, *Defendant.*
No. 59 C 1847.

FINAL JUDGMENT.

At Chicago, Illinois, in said Division and District on December 13, 1965, this matter coming on to be heard for the entry of a judgment herein, and upon Findings of Fact and Conclusions of Law heretofore entered herein on January 25, 1965, as modified by Amended Findings of Fact entered herein on December 13, 1965, and upon notice to all counsel of record, and the Court having heard the argument of counsel,

It Is Hereby Ordered that a joint and several judgment be entered herein in favor of Zenith Radio Corporation, the defendant and counterclaimant herein, and against Hazeltine Corporation and Hazeltine Research, Inc. in the amount of Fifteen Million Nine Hundred Nineteen Thousand Four Hundred Fifty-Eight Dollars ($15,919,458), together with the costs of this suit and a reasonable attorneys' fee, to be fixed by the further order of this Court.

999 It Is Further Ordered that jurisdiction of this cause be and it is hereby reserved for a further hearing on the amount of costs of this suit and reasonable attorneys' fees with respect to this judgment and the judgment heretofore entered herein on April 5, 1965.

Enter:

R. B. Austin,
Judge.

Dated: December 13, 1965.

IN THE UNITED STATES DISTRICT COURT.
(Caption—59-C-1847)

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause, before the Honorable Richard B. Austin, one of the Judges of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois, on Monday, December 13, 1965, at 10:00 o'clock, a.m.

Present:

Messrs. Chadwell, Keck, Kayser, Ruggles & McLaren (135 S. LaSalle Street, Chicago, Illinois), by Mr. Victor P. Kayser, and Mr. C. Lee Cook, Jr., on behalf of the Plaintiff;

Messrs. McConnell, Freeman, Curtis & McConnell (134 S. LaSalle St., Chicago, Illinois), by Mr. Thomas C. McConnell, and Mr. Francis J. McConnell, on behalf of the Defendant.

2 The Clerk: 59 C 1847, Hazeltine v. Zenith, plaintiff's offer of proof, motion of defendant for entry of findings of fact and conclusions of law, and order of judgment.

Mr. Kayser: Good morning, your Honor.

The Court: Good morning.

Mr. Kayser: We would like at this time to file our offer of proof consistent with a document entitled "Offer of Proof on Market Share and Damages." With this we are also filing a number of affidavits from persons in England and Australia and from an economist, marketing expert and—

The Court: This has to do, I assume, with tending to diminish the damages in that Zenith perhaps could not have sold what I have indicated they would sell during the damage period, is that right?

Mr. Kayser: Yes, your Honor.

The Court: This, in my opinion, is something that should have been offered at the original trial.

Mr. Kayser: Yes.

The Court: And I, of course, will—have never denied an offer of proof, and if you desire to file this offer
3 of proof, the Court will permit you to do so.

Mr. Kayser: Yes, we do.

Your Honor, if I may, I would like to make a statement for the record in connection with the offer.

The Court: All right, you may do so.

Mr. Kayser: And that is this, your Honor, that back on April 1, 1965, when your Honor held that there should be a hearing on whether or not radios and televisions could be imported into England and Australia during the damage period—

The Court: This was on the embargo issue?

Mr. Kayser: Yes. At that time your Honor said that if the restrictions were proved, then there could be some testimony as to whether the percentages of the market claimed under those circumstances, if that is shown to be the fact, whether the percentage figures should be as high as they are.

And then again on May 3 at a hearing on the motion to produce your Honor said, and I quote from Page 5 of the transcript:

"The first hearing is going to be limited to this
4 embargo business, and if after that there is some reason for additional testimony, there being no embargoes for a certain period of time, why, then we will get to that step next."

Then on August 26th your Honor stated in the order entered on that date, when there was a consideration as to what should be the subject matter of depositions, after setting the date for the depositions, he said:

"At that time the Court will hear evidence solely on the question of the existence of import restrictions imposed by the Governments of England and Australia preventing the importation of radio and television sets from the United States in commercial quantities. In the event that plaintiff succeeds in proving the existence of such import restrictions in either country, the Court will fix a date for a future hearing on the question of market share, which date will provide sufficient time for the parties to conduct necessary discovery and to take necessary depositions in the foreign countries involved."

Then, of course, as your Honor recalls, on October 21 you ruled the existence of the import restrictions preventing the import in commercial quantities had been established.

The Court: And we also had a hearing to this extent, that the original witnesses who estimated damages said that their estimates would have been the same regardless of the fact that there was or was not an embargo, or that they took that into consideration in arriving at their figure. I mean, Mr. Wright and the other gentlemen so testified, and had their testimony been different—

Mr. Kayser: That is correct.

The Court: —the Court might have gone on and had a further hearing.

Mr. Kayser: Yes.

Well, your Honor said as concerns that evidence on November 22nd, said:

"I feel that in regard to both countries it is unrealistic to believe that starting out from scratch they could have achieved the percentage of the market and the percentage of profits that Exhibit 220 indicates they might receive."

The Court: And as a result of that belief I took some action.

Mr. Kayser: Yes, your Honor, that is also true.

The Court: And I think I was consistent.

Mr. Kayser: Well, this really completes my statement. I did want to state for the record that we felt that in view of the fact that we had established the import restrictions that the judgment should not be entered at this time and that we should be permitted the market share hearings referred to.

The Court: And the record, of course, shows that it is not entered in the amount that was originally fixed by the Court.

And now I have before me a final—I have two final judgment orders.

Mr. McConnell: Your Honor, I changed the judgment order because of the objection that was made by Mr. Kayser as to the date. I have acceded to his suggestion and changed the date.

7 The Court: Then the judgment order that is before me today is the one that is—

Mr. McConnell: December—

The Court: December 13th?

Mr. McConnell: That is correct, your Honor.

The Court: And the other one is withdrawn, is that right?

Mr. McConnell: That is correct.

The Court: Will you see that he withdraws it?

The Clerk: Yes, sir.

The Court: And the other matter before me is the amended findings of fact.

Mr. McConnell: That is correct.

The Court: Those orders are signed, Counsel.

Does that clean this up other than the attorney's fees and costs?

Mr. McConnell: I think so, your Honor. I don't know of anything else that is pending.

Mr. Kayser: There will be the matter of the stay, too, which we will bring up in the next day or so.

Mr. McConnell: There is an automatic stay.

Mr. Kayser: Yes.

The Court: I think I gave you leave to file your offer of proof.

Mr. McConnell: I have never had any copies of these offers.

Mr. Kayser: Well, you do, Mr. McConnell.

I did not understand that we needed to, but as a matter of courtesy, we have served your office with copies.

Mr. McConnell: All right.

Mr. Francis McConnell: When?

Mr. Kayser: This morning.

The Court: The notice of an offer of proof isn't of such paramount importance that I am going to further retain jurisdiction.

Mr. McConnell: No, your Honor. I don't suggest that. I was just curious as to what they were.

Mr. Kayser: I assume, for the record, your Honor, that our offer of proof is denied?

The Court: I mean, you are given leave to file an offer of proof. I have never denied anybody leave to file an offer of proof, and I think that that makes your record the way that you want it to be.

Mr. Kayser: Yes, thank you.

* * * * *

1085 UNITED STATES DISTRICT COURT,

Northern District of Illinois,

Eastern Division.

Hazeltine Research, Inc., *Plaintiff-Counterdefendant,* *vs.* Zenith Radio Corporation, *Defendant-Counterclaimant.*	Civil Action No. 59 C 1847

NOTICE OF APPEAL.

Notice is hereby given that Hazeltine Research, Inc., against whom a "Final Judgment" in the above entitled action was entered on December 13, 1965, hereby appeals to the United States Court of Appeals for the Seventh Circuit from said final judgment.

Dated: December 29, 1965.

John T. Chadwell,
Victor P. Kayser,
Attorneys for Hazeltine Research, Inc.

Of Counsel:

Laurence B. Dodds,
59-25 Little Neck Parkway,
Little Neck, New York 11362,
212-FAculty 1-2300,

Chadwell, Keck, Kayser,
Ruggles & McLaren,
135 South LaSalle Street,
Chicago, Illinois 60603,
RAndolph 6-2545,

Mason, Kolehmainen, Rathburn & Wyss,
20 North Wacker Drive,
Chicago, Illinois 60606,
FInancial 6-1677.

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UNITED STATES DISTRICT COURT,
Northern District of Illinois,
Eastern Division.

Hazeltine Research, Inc.,
Plaintiff-Counterdefendant,
vs.
Zenith Radio Corporation,
Defendant-Counterclaimant.

Civil Action
No. 59 C 1847

NOTICE OF APPEAL.

Notice is hereby given that Hazeltine Corporation, against whom a "Final Judgment" in the above entitled action was entered on December 13, 1965, hereby appears specially and hereby appeals to the United States Court of Appeals for the Seventh Circuit from said final judgment.

Dated: December 29, 1965.

John T. Chadwell,
Victor P. Kayser,
Attorneys for Hazeltine Corporation.

Of Counsel:
Chadwell, Keck, Kayser,
Ruggles & McLaren,
135 South LaSalle Street,
Chicago, Illinois 60603,
RAndolph 6-2545.